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# ENVIRONMENTAL ASSESSMENT BOARD

VOLUME:

86

DATE:

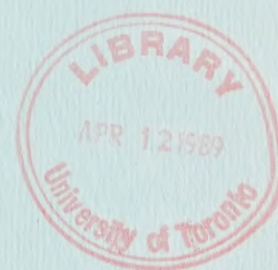
Wednesday, April 5th, 1989

BEFORE:

M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council  
(O.C. 2449/87) authorizing the  
Environmental Assessment Board to  
administer a funding program, in  
connection with the environmental  
assessment hearing with respect to the  
Timber Management Class  
Environmental Assessment, and to  
distribute funds to qualified  
participants.

-----  
Hearing held at the Ramada Prince Arthur  
Hotel, 17 North Cumberland St., Thunder  
Bay, Ontario, on Wednesday, April 5th,  
1989, commencing at 9:00 a.m.

-----  
VOLUME 86

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



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MS. Y. HERSCHER )	
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MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD )	





APPEARANCES: (Cont'd)

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MR. D. SCOTT ) MR. J.S. TAYLOR)	NORTHWESTERN ONTARIO ASSOCIATED CHAMBERS OF COMMERCE
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MR. P.D. McCUTCHEON	GEORGE NIXON





(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO  
TOURISM ASSOCIATION





I N D E X   O F   P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>DAVID LOWELL EULER,</u> <u>PETER PHILLIP HYNARD,</u> <u>JOHN TRUMAN ALLIN,</u> <u>RICHARD BRUCE GREENWOOD,</u> <u>CAMERON D. CLARK,</u> <u>GORDON C. OLDFORD, Resumed</u>	14401
Cross-Examination by Ms. Swenarchuk	14401





(v)

I N D E X   O F   E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
492	Drafts of training messages regarding moose guidelines and fish guidelines.	143972
493	MOE Interrogatory No. 20	14400
494	MOE Interrogatory No. 7 posed to Panel 10.	14566





1 ---Upon commencing at 9:05 a.m.

2 THE CHAIRMAN: Thank you.

3 Good morning, everyone. Please be  
4 seated.

5 Mr. Freidin?

6 MR. FREIDIN: Mr. Chairman, yesterday we  
7 filed Exhibit 489 which was the Interim Direction in  
8 relation to the guidelines. I have some additional  
9 material that I would like to file this morning. The  
10 additional material perhaps should be described as  
11 drafts of training messages regarding moose guidelines  
12 and fish guidelines.

13 Mr. Chairman, this material is being  
14 filed because, although it is not part of the formal  
15 direction that was filed, or the draft direction which  
16 was filed yesterday, it does contain information  
17 regarding those guidelines by way of perhaps assisting  
18 people in terms of interpreting certain sections of  
19 those guidelines.

20 So they are draft at the present time and  
21 I would like to file them just so that they can be of  
22 whatever assistance they might be.

23 THE CHAIRMAN: Well, would this not  
24 assist Mr. Tuer having an opportunity of looking at  
25 them to see whether he wants to pose some further

1 questions to this panel on them?

2 MR. FREIDIN: Exactly, it was the next  
3 point I was going to make. Mr. Tuer obviously has not  
4 seen these and he should obviously retain the right to  
5 review them and cross-examine if he sees fit.

6 THE CHAIRMAN: Well, perhaps if we could  
7 it this way. Let's admit them now. Ms. Swenarchuk,  
8 have you had an opportunity to see these?

9 MS. SWENARCHUK: Just now, Mr. Chairman.

10 THE CHAIRMAN: Just now, but you are  
11 going to be a couple of days. Why don't we come back  
12 to Mr. Tuer at the end of Ms. Swenarchuk's  
13 cross-examination and, Mr. Tuer, if you want to put  
14 some more questions, based on these only, at that time  
15 I think we will go back to you and then go on with  
16 normal order.

17 MR. TUER: Thank you, Mr. Chairman, that  
18 is quite satisfactory

19 THE CHAIRMAN: And you, Ms. Swenarchuk,  
20 can deal with these at some point during your  
21 cross-examination.

22 This will be Exhibit No. 492.

23 ---EXHIBIT NO. 492: Drafts of training messages  
24 regarding moose guidelines and  
fish guidelines.

25 MR. FREIDIN: Just two documents I would



1       like to make about them, Mr. Chairman.

2                       Yesterday there was a question I believe  
3       of Dr. Euler about whether he was aware of any sort of  
4       procedural -- or how this Interim Direction was going  
5       to be dealt with procedurally, and I believe he  
6       indicated that he wasn't aware of what was being done  
7       in that regard.

8                       I can advise that it is something which  
9       has not been finalized, none of the witnesses have been  
10      involved in what little has gone on to date about how  
11      this Interim Direction is going to end up getting  
12      incorporated into a timber management plan in terms of  
13      where and how and those sorts of details.

14                      We are hopeful that that sort of  
15      detail -- that sort of planning detail will be  
16      finalized before Panel 15 and could be addressed along  
17      with all the other planning matters.

18                      And on the very first page of Exhibit  
19      492, to answer a question which will probably come to  
20      one's mind when you look at the response, it says:

21                      "A letter outlining the rationales,  
22                      principles and anticipated flexibility  
23                      has been issued by the ADM's Office and a  
24                      Guidelines Coordinator has been appointed  
25                      to provide interpretation and training."

1                   No such letter has been issued, Mr.  
2           Chairman. This is again much like the policy which was  
3           issued to the fisheries policy that Dr. Allin referred  
4           to. In anticipation of these matters becoming final,  
5           the response has been worded in the way that it is.

6                   I realize that the letter which would go  
7           out, basically when it says: "...which outlines the  
8           rationales, principles and anticipated flexibility..."  
9           Would probably end up being something like a summary of  
10          the actual direction which has been filed which, in  
11          fact, does outline the rationales, principles and  
12          anticipated flexibility.

13                   THE CHAIRMAN: Well, in the event that  
14          one is issued at some point, you will advise the Board?

15                   MR. FREIDIN: Yes, yes. And again, as we  
16          indicated yesterday these are draft and if there are  
17          changes then we will file any amendments.

18                   THE CHAIRMAN: Thank you.

19                   Mr. Tuer?

20                   MR. TUER: Mr. Chairman, in my attempt to  
21          meet my self-imposed deadline yesterday, I overlooked  
22          one interrogatory that I wanted to file as an exhibit.

23                   THE CHAIRMAN: Very well.

24                   MR. TUER: It is Question 20 of the  
25          interrogatories filed in answer with respect to the

1 Ministry of the Environment. (handed)

2 THE CHAIRMAN: Thank you. This will be  
3 exhibit 493.

4 ---EXHIBIT NO. 493: MOE Interrogatory No. 20.

5 MR. HYNARD: Mr. Chairman, before I  
6 begin, I had promised Mr. Tuer to check a figure for  
7 him yesterday; that was the figure relating to the  
8 spacing of group seed trees on page 97 of Volume I,  
9 Panel 10 statement of evidence.

10 I checked that and his advisors were  
11 correct, the spacing is not 200 metres. The spruce  
12 silvicultural guide says 90 to 150 metres.

13 THE CHAIRMAN: So it is not 200 feet  
14 either?

15 MR. HYNARD: It is not 200 feet either.

16 THE CHAIRMAN: Sorry, what page was that  
17 on?

18 MR. HYNARD: 97.

19 THE CHAIRMAN: Thank you.

20 MS. SWENARCHUK: This is the second last  
21 line on the page; is that right, Mr. Hynard?

22 MR. HYNARD: That's right.

23 MS. SWENARCHUK: And the correction  
24 should be what?

25 MR. HYNARD: 90 to 150 metres.



1                    DAVID LOWELL EULER,  
2                    PETER PHILLIP HYNARD,  
3                    JOHN TRUMAN ALLIN,  
4                    RICHARD BRUCE GREENWOOD,  
5                    CAMERON D. CLARK,  
6                    GORDON C. OLDFORD, Resumed

7                    MS. SWENARCHUK: Panel members -- or  
8 perhaps Mr. Freidin can answer this. Is there someone  
9 designated to be a team captain for this panel, Mr.  
10 Freidin?

11                   MR. FREIDIN: Mr. Clark.

12                   CROSS-EXAMINATION BY MS. SWENARCHUK:

13                   Q. Now, Mr. Clark, if you would turn to  
14 page 47 of Volume I which is the executive summary, I  
15 note from the signatory page 2 of the document which is  
16 some distance on, that no witness has been designated  
17 to testify to paragraphs 1 and 2 at the beginning of  
18 this volume.

19                   If you would like to just read those  
20 paragraphs over, Mr. Clark, I have some questions for  
21 you.

22                   MR. CLARK: A. Fine.

23                   Q. Now, to your knowledge, Mr. Clark, in  
24 preparation of this panel's evidence, did the Ministry  
25 conduct any studies on any of the subject matters  
addressed in this panel within the area of the  
undertaking to establish actual effects of timber

1 harvest?

2 A. I don't believe the Ministry  
3 undertook any specific studies that related directly to  
4 production of this evidence. I think the approach was  
5 to draw on studies that had been undertaken previously  
6 or were in progress that would assist in defining the  
7 effects.

8 Q. Assist in defining potential effects?

9 A. Yes.

10 Q. If you will turn to the interrogatory  
11 package which Mr. Tuer filed for me yesterday, the  
12 exhibit number of which I do not recall.

13 THE CHAIRMAN: Exhibit 491.

14 MS. SWENARCHUK: Yes, 491.

15 Q. And turn to Question No. 5, please,  
16 of the FFT questions.

17 We asked about how the Ministry records  
18 the decision-making process indicating consideration  
19 given to the various possible environmental effects and  
20 tradeoffs made.

21 And I am not going to discuss with you my  
22 satisfaction or lack of satisfaction with regard to the  
23 response, but if we look at the last line of paragraph  
24 (a) we see:

25 "Our best current information on effects

1 of harvest is provided in the  
2 evidence in Panel 10."

3 The last line in paragraph (a) of the  
4 response.

5 A. Correct.

6 Q. So then, what we have heard and seen  
7 in this panel presumably is all the Ministry knows  
8 about the environmental effects of harvest in the area  
9 of the undertaking?

10 A. Well, I would characterize it as a  
11 summary of what we think we know about potential  
12 effects, yes.

13 Q. And the Ministry did no studies on  
14 any of these subject areas to attempt to establish  
15 actual effects?

16 A. I would like to confirm that with my  
17 panel members here. My sense is that we didn't do any  
18 specific, as I pointed out, studies; that we relied on  
19 existing material.

20 Q. Well, I am happy to ask each panel  
21 member that. Mr. Oldford, did MNR do any studies of  
22 actual effects of logging techniques?

23 MR. OLDFORD: A. Some of the studies  
24 referred to in the evidence and in the evidence given  
25 by Mr. Greenwood relates to studies that we were



1 involved in and I believe some study that we funded.

2 I don't believe that we undertook any  
3 studies while we were in the preparation of the  
4 evidence in Panel 10, but we have been involved and  
5 have participated in studies that led to us putting the  
6 evidence forth that we put forth in Panel 10.

7 Q. Yes. All right. Let me put it  
8 another way: You didn't undertake any particular  
9 studies in anticipation of presenting - you, meaning  
10 the Ministry - did not do any studies in anticipation  
11 of presenting evidence to this Board on the actual  
12 effects -- environmental effects of timber harvest,  
13 logging in your...

14 A. No, we did not, but the very  
15 preliminary questions that we received in Panel 10  
16 indicated some concern over full tree logging --

17 Q. Excuse me, Mr. Oldford, I am not  
18 speaking now with regard to questions that have arisen  
19 during the course of the hearing, but rather the  
20 process that the Ministry used to develop this witness  
21 statement before any questions were asked about it.

22 And I think the answer simply is, you  
23 didn't study specifically the actual effects of logging  
24 on the environment in Ontario; isn't that correct?

25 A. Not since we started putting the

1 evidence together for Panel 10, to my knowledge, Ms.  
2 Swenarchuk.

3 Q. And not in anticipation of presenting  
4 evidence here either?

5 A. I would have --

6 Q. Were any such studies --

7 A. I would have to disagree with that--

8 Q. Fine.

9 A. --because for ten years we have  
10 known, Mr. Chairman, that we were going to be before an  
11 environmental assessment hearing of some sort, or we  
12 anticipated that, and we have been, as an Ministry,  
13 very interested in the scientific matters related to  
14 forestry and forest harvesting.

15 Q. So then there are some studies which  
16 the Ministry undertook or funded specifically or  
17 partially, in the last ten years you are saying, to  
18 produce evidence that would be adduced here; is that  
19 right?

20 A. I would like to have Mr. Greenwood  
21 refer to the specific studies.

22 Q. Would you do that, please, Mr.  
23 Greenwood? I simply would like the names of the  
24 studies and I would like them produced, that's all.

25 MR. GREENWOOD: A. There were studies

1       that took place within the last ten years that would  
2       have pertinence to these hearings, but I couldn't state  
3       whether the major reason for the undertaking of that  
4       study was the advent of this hearing.

5                   Q.   Okay.  Now, would those be studies  
6       that appear in the bibliographies of Volumes I and II  
7       somewhere?

8                   A.   Yes.

9                   Q.   So you are really referring here then  
10       to studies that appear in the scientific literature?

11                  A.   That's correct.

12                  Q.   I would appreciate it if you would  
13       give me a list by the end of today of the studies which  
14       MNR funded or partially funded - let's go back to 1975  
15       when the EA Act came into effect - specifically for the  
16       purpose of presenting evidence before an environmental  
17       assessment panel?

18                  A.   Specifically for the presentation of  
19       evidence, I would say zero.

20                  Q.   All right.  That is fair enough,  
21       thank you.

22                  Now, Dr. Euler, I think, based on your  
23       own professional expertise, you did advance some  
24       opinions -- expert opinions which constitute evidence  
25       about environmental impacts of forestry on wildlife.

1                   Can I ask you the same question though:  
2     In anticipation of presenting evidence here, did the  
3     Ministry prepare and fund studies related to the  
4     environmental impacts of forestry on wildlife?

5                   DR. EULER:   A.   No.   Not to the best of  
6     my knowledge, no.

7                   Q.   And, Mr. Greenwood, with respect to  
8     silvicultural systems -- I'm sorry, Mr. Hynard?

9                   MR. HYNARD:   A.   No, there were no  
10    studies conducted specifically for the preparation of  
11    my evidence on silvicultural harvest systems.

12                  Q.   And, Mr. Clark?

13                  MR. CLARK:   A.   No, there were none  
14    produced specifically dealing with socio-economic  
15    effects.

16                  Q.   All right.

17                  THE CHAIRMAN:   When you say, gentlemen,  
18    none produced specifically.  If they weren't produced  
19    specifically for the purposes of supporting this  
20    application or this process at the hearing, or hearings  
21    that were anticipated, and you were doing them in the  
22    course of the normal activities of the Ministry - and I  
23    presume that is why they were done, if they weren't  
24    done for the purposes of the EA process - was it  
25    intended that should there ever be an EA process, that



1 those studies would be used in support thereof?

2 MR. CLARK: Certainly. I think the  
3 approach we have taken -- I want to make one point  
4 here, that it didn't require that we be asked to  
5 produce a Class Environmental Assessment in order for  
6 us to have an interest in these kinds of things, and I  
7 think it is safe to say that we have been involved  
8 in studies of this kind prior to the development of  
9 this evidence.

10 MS. SWENARCHUK: Q. I don't deny that,  
11 Mr. Clark.

12 MR. CLARK: A. And our approach is  
13 simply to be -- has simply been to use all the evidence  
14 that is available to develop our evidence.

15 And so that any of the studies that we  
16 were either directly involved in or were available to  
17 us we saw as a potential resource for developing our  
18 evidence.

19 Q. Evidence on the --

20 MR. MARTEL: Can I ask a question? What  
21 list of documents do you have that were prepared  
22 specifically for the EA Act, and I am talking about  
23 where the moose guidelines or the fish guidelines or  
24 all the manuals we have seen that dated since 1985 or  
25 '86.

1                   Were these prepared specifically, and  
2                   could we have a list of those that were prepared  
3                   specifically for the hearing?

4                   MR. CLARK: There certainly have been a  
5                   certain number that were produced for the hearing. I  
6                   am not sure -- I certainly couldn't list them for you  
7                   now.

8                   MR. MARTEL: No.

9                   MR. CLARK: If we were to pursue that, I  
10                  think I would like some time to discuss it before I  
11                  respond in terms of what would be involved.

12                  MR. FREIDIN: I can't add anything at  
13                  this time to that. I think on examination it may turn  
14                  out that most, if not all, the documents were documents  
15                  which would have been produced in the normal course of  
16                  events. I mean, there were Fish Habitat Guidelines and  
17                  things evolved.

18                  I think it would be almost impossible to  
19                  distinguish any particular documents, you know, if that  
20                  document was prepared specifically for the EA it would  
21                  not have under any other circumstances ever have been  
22                  produced otherwise.

23                  And I think that the answer -- if that's  
24                  what we're looking for, I don't think there are any  
25                  documents that fall into that category.

1                   THE CHAIRMAN: We are not talking, I  
2 don't think, Mr. Freidin, in terms of the documents  
3 that were produced specifically to explain other  
4 documents.

5                   For instance, Mr. Clark, you produced a  
6 document that I think is in this pile which ended up as  
7 sort of slide presentations with charts and things like  
8 that, but I think those were meant to explain  
9 principles or further explain your panel's evidence.

10                  That kind of document, obviously, was  
11 prepared for the hearing and wouldn't be prepared  
12 otherwise.

13                  MR. FREIDIN: I don't think that is what  
14 Ms. Swenarchuk is asking for, and I think I understand  
15 what she's asking for and I think the best way to leave  
16 it, perhaps - unless we advise you to the contrary -  
17 there are no documents that were specifically prepared  
18 only for presentation at this environmental assessment.

19                  MR. GREENWOOD: Ms. Swenarchuk, by  
20 documents prepared specifically for this, or you're  
21 saying --

22                  MS. SWENARCHUK: Excuse me, those are Mr.  
23 Freidin's words. My words are -- which is fair enough.

24                  Q. But my question is: Were there  
25 studies of actual environmental effects undertaken in

1 any of the areas to which you have testified for  
2 presentation to this hearing; actual effects as opposed  
3 to potential effects, and I take it the answer in all  
4 areas to that is no.

5 MR. GREENWOOD: A. How would you define  
6 study? A field examination and collection of data in  
7 the field?

8 Q. That's one way. I am sure there  
9 would be many ways of doing it if one turned one's mind  
10 to it, and I am not going to suggest how it should have  
11 been done.

12 A. There is an exercise that comes to  
13 mind which was presented in Panel -- the ESSA exercise,  
14 which was a consolidation of knowledge.

15 If in fact you call that a study, the  
16 bringing together of experts to consolidate knowledge,  
17 to review literature, that may be considered a study by  
18 some, then I would say that exercise was undertaken  
19 specifically as a result of the environmental  
20 assessment.

21 Q. Right. Well, that is not what I  
22 am -- that wouldn't satisfy my question.

23 Let me give you a concrete example. Mr.  
24 Greenwood, did anyone to your knowledge do any kind of  
25 study across the area of the undertaking or sampling



1 specific areas or anything like that on the actual  
2 incidence of rutting and compaction in the area of the  
3 undertaking?

4 A. No.

5 Q. No. That is the kind of thing I am  
6 getting at. Now, clearly for everyone, the answer is  
7 no; is that right?

8 Dr. Allin, with respect to aquatic  
9 effects?

10 DR. ALLIN: A. That's correct, there  
11 were no specific studies done across the area of the  
12 undertaking on aquatic effects.

13 Q. So coming back to Mr. Clark then, as  
14 the team captain, can you explain to me why the  
15 Ministry decided not to lead evidence about actual  
16 effects?

17 MR. CLARK: A. I am assuming when you  
18 say actual that you mean that we have gone out and  
19 documented effects that have actually occurred  
20 throughout the area of the undertaking.

21 I think when we put this information  
22 together - if I can go back to some of the evidence  
23 that has already been presented - we were dealing with  
24 a great, great many what we would refer to as potential  
25 effects.

1                   In many cases it was unclear as to  
2                   whether those effects really occur and our effort was  
3                   to put together as complete a list of potential effects  
4                   as possible, and I think as well to identify those  
5                   which were or could be most significant in terms of the  
6                   particular activity, in this case harvesting, that we  
7                   were dealing with.

8                   Q.   And perhaps this is a question for  
9                   argument later, but I take it the assessment of the  
10                  Ministry then is that this is an environmental  
11                  assessment of potential effects on the environment as  
12                  opposed to actual effects on the environment of timber  
13                  management?

14                  A.   I think we use the word potential  
15                  because --

16                  Q.   Because you didn't have any studies  
17                  of actual effects?

18                  A.   No, I don't think that is true at  
19                  all. I think if you look at the literature you will  
20                  find that there is a great deal of research included in  
21                  the documentation that speaks to effects.

22                  I think the point we were making is that  
23                  these effects don't occur all of the time everywhere.  
24                  Erosion and sedimentation is a potential effect. It  
25                  actually occurs in some instances, but not always. And

1       that was the context within which we developed our  
2       evidence.

3                       Harvest may negatively impact on a  
4       particular user group, but it may not always impact  
5       negatively on that particular --

6                       Q.   Well, isn't it the case, Mr. Clark,  
7       that at that this point the Board, in fact, has not  
8       received evidence from the Ministry about the actual  
9       extent of any of these effects, virtually any of them  
10      in the area of the undertaking?

11                      A.   I don't really think that is true.  I  
12      think that much of the evidence was led, a very  
13      conscious effort was made to summarize the extent to  
14      which certain of these effects occurred.

15                      I know that Mr. Greenwood talked about  
16      certain of the effects that was included in his  
17      evidence and attempted to summarize the frequency with  
18      which those occurred.

19                      Q.   Without necessarily having studies of  
20      the frequency?

21                      A.   I'm being careful not to generalize  
22      here.  I think that's generally true.  I likewise  
23      attempted to summarize the overall effect as being  
24      either positive, neutral or negative.

25                      Q.   And I take it specifically with

1       respect to your evidence on socio-economic effects, Mr.  
2       Clark, there weren't even many studies in the  
3       literature on that subject that you referred to?

4                   A. No, there aren't.

5                   Q. In fact I don't think there were any;  
6       is that right?

7                   A. That's correct.

8                   Q. So your evidence could be  
9       characterized as really purely speculative?

10                  A. It is indeed quite speculative.

11                  Q. Anecdotal.

12                  A. I think -- I wouldn't want to use  
13       either of those terms in the pejorative. I think one  
14       of the points that we made early on, I made in my  
15       evidence, was that to a large extent what we were  
16       attempting to do was summarize the values and concerns  
17       of a variety of user groups and I think I went to great  
18       lengths to point out that we rely very much on the  
19       timber management planning process to provide us with  
20       that kind of information.

21                  What we did attempt to do there, and I  
22       think I made that very clear, was to provide you with  
23       our understanding of the kind of concerns that a  
24       variety of user groups have and how they are reflected  
25       in, if you want, their perception of what effects may



1 occur as a result of, in this case, harvest activities.

2 We have a great deal of experience in  
3 this particular area and, as a result, I think that our  
4 observations and the way these groups function, the  
5 concerns that they normally bring to the table when  
6 they are discussing issues with us, are quite relevant  
7 evidence.

8 Q. You weren't, however, able to provide  
9 to the Board studies or factual data to back up your  
10 assessment of overall positive and negative  
11 socio-economic effects; is that not right?

12 A. No, we weren't.

13 Q. In other words, this is Mr. Clark's  
14 assessment of how these things pile up, but there has  
15 not been some sort of objective look at the whole  
16 question to try to determine whether in fact there are  
17 usually positive effects or usually negative effects on  
18 any specific group?

19 A. No.

20 THE CHAIRMAN: How exactly, Ms.  
21 Swenarchuk, do you propose that that could have been  
22 done from a practical standpoint?

23 Do you go out and conduct the activities  
24 that are before the Board for consideration, the four  
25 basic activities in every sort of conceivable situation

1 or combination of situations, then sit back and do a  
2 study on the actual effects and then decide whether or  
3 not, as a result of the study, if there are many  
4 negative effects that were visited as a result of the  
5 activities.

6 They've already occurred; in other words,  
7 you've conducted activities in a certain area and you  
8 end up with a negative effect. That would give you an  
9 actual, but it certainly may not give you the desired  
10 result.

11 How do you do this --

12 MS. SWENARCHUK: The desired result being  
13 what?

14 THE CHAIRMAN: Not to visit a negative  
15 effect on a particular user group or a natural  
16 environment. In other words, to end up getting some of  
17 this information - to follow your line - you would have  
18 had to have conducted the activity in a certain  
19 fashion, then studied it to find out actually what  
20 happened.

21 MS. SWENARCHUK: Well, we have had timber  
22 management in this province, as the witnesses here have  
23 said, for three hundred years. There certainly are  
24 actual effects of timber management activity studies.

25 THE CHAIRMAN: And there has been

1 monitoring to one extent or another of some of these  
2 activities over the course of time as well, and there  
3 has been a body of experience built up by those  
4 managing those resources as to what the effects are,  
5 and some of the managers of those resources are before  
6 us as witnesses.

7 Now, the fact that there is not a study,  
8 you know, a scientific study that went out there and  
9 plotted all of these on charts and graphs and things  
10 like that -- I mean, that's one way to confirm what is  
11 happening. But is not another way to confirm, to hear  
12 from those people managing and those people in charge  
13 of whatever monitoring took place and bringing their  
14 expertise to bear in terms of the evidence that they  
15 are presenting?

16 MS. SWENARCHUK: Well, Mr. Chairman, in  
17 our view - and I am sure you will hear further argument  
18 about this - the mandate of the Board in conducting an  
19 environmental assessment is to study -- to reach  
20 conclusions about the effect of the activities studied  
21 on the environment; not simply to look at the  
22 scientific literature about effects on the environment,  
23 but to study the actual effects on the environment  
24 affected and --

25 THE CHAIRMAN: Well, I would suggest to

1       you that in some cases that is entirely impossible.  
2       Some of the effects on the environment will take, in  
3       some cases, one or two rotation ages. We are not going  
4       to be around for the next 180 years--

5                       MS. SWENARCHUK: Yes.

6                       THE CHAIRMAN: --to find out what the  
7       actual effect is on a certain stand of trees.

8                       MS. SWENARCHUK: Yes, agreed. In some  
9       subjects that would be an appropriate -- there would be  
10      no better evidence than scientific estimates about  
11      further effects.

12                      But on other subjects, the one that comes  
13      to mind is again compaction and rutting, it is either  
14      happening now in fact or it is not happening and, in  
15      our estimate, you are deprived of information that's  
16      essential in evaluating the effect of this activity on  
17      the environment if you are not given actual evidence  
18      about the incidence of that and there are -- studies  
19      have been conducted in other areas, it is not as if it  
20      is impossible to study that question.

21                      THE CHAIRMAN: Okay, but just taking the  
22      example you posed. Obviously there has been harvesting  
23      in a variety of circumstances in all the seasons  
24      throughout the area of the undertaking. The witnesses  
25      have testified as to whether or not, in their view,



1 given the equipment that they are using, rutting and  
2 compaction is or is not a problem and they have  
3 indicated, in their view, how it could be a problem or  
4 it couldn't be a problem and under what circumstances.

5 Now, why isn't that evidence on rutting  
6 and compaction? What is a study going to do in terms  
7 of giving you more evidence than their views based on  
8 the techniques used today or based on better techniques  
9 that they might suggest should be used?

10 MS. SWENARCHUK: A study might give you  
11 some numbers in specific areas as the studies cited  
12 from other jurisdictions have done.

13 Mr. Chairman, you are in the position of  
14 having to rely now on kind of generalized opinions of  
15 individuals who couldn't possibly have knowledge of the  
16 entire area of the undertaking in concluding that some  
17 of these effects happen or don't happen.

18 THE CHAIRMAN: Well, I would suggest that  
19 any scientist that went out there to do a study might  
20 be put in the same position; they couldn't possibly  
21 have knowledge across the entire area of this  
22 undertaking--

23 MS. SWENARCHUK: That's right.

24 THE CHAIRMAN: --which covers more than  
25 half the land mass of Ontario and come before the Board

1 with any degree of certainty and say that because this  
2 kind of activity occurs, here are the numbers in terms  
3 of where it is going to occur elsewhere.

4 Surely there has got to be extrapolation  
5 for any of this kind of thing.

6 MS. SWENARCHUK: Yes, but they might at  
7 least do it in selected areas or sampling areas which  
8 you would then have before you to look at.

9 MR. MARTEL: Are you looking for data  
10 maybe in the sense that -- let me just give you an  
11 example. Maybe someone is leaving drums of oil in the  
12 stream, you know, from a sloppy operation or how often  
13 rutting occurs--

14 MS. SWENARCHUK: Exactly.

15 MR. MARTEL: --that necessitates MNR  
16 going in to try to get it cleaned it up, and how  
17 frequently does that occur across the area of the  
18 undertaking?

19 In other words, am I right in assuming  
20 what you are looking for is some kind of documentation  
21 which indicates how frequently or how infrequently  
22 these things might occur?

23 MS. SWENARCHUK: Yes, Mr. Martel. The  
24 Ministry has taken a position that it is important to  
25 look at the magnitude, intensity, frequency and

1 duration of effects and what I am suggesting is that in  
2 preparation of an environmental assessment of effects  
3 on the environment that studies, where possible, should  
4 have been done of actual magnitude, intensity,  
5 frequency and duration as opposed to coming to the  
6 Board with the position that all that was necessary was  
7 a discussion of potential effects.

8 MR. MARTEL: But I don't think you asked  
9 MNR - if I could be so bold as to suggest - if they  
10 have kept, or do they keep a file on the effects across  
11 the area of the undertaking in specific areas and, you  
12 know, they review the five-year plan in the first  
13 annual review of the five-year plans and so on and do  
14 they do a compilation, so as to be able to tell their  
15 people what to look for as well.

16 MS. SWENARCHUK: Well, as a matter of  
17 fact, Mr. Martel, we have asked them that in the  
18 undertaking process and the results of that we will be  
19 using in Panel 15 on monitoring, as everyone else is  
20 going to use everything else in Panel 15. The results  
21 of that don't in fact add much to the discussion that  
22 has happened in Panel 10.

23 And I don't know that I need to ask this  
24 panel about their overall auditing procedures, but  
25 rather simply, in preparation of their evidence, were

1 studies done on these subjects.

2 THE CHAIRMAN: Supposing that studies -  
3 and I take it from the panel's evidence that studies  
4 were not done - what do you propose at this stage?

5 MS. SWENARCHUK: In our estimation the  
6 Board has a problem which is that it has only obtained  
7 evidence about potential effects and very cursory  
8 opinions about magnitude, intensity, frequency and  
9 duration including on some types of effects where those  
10 things could have been measured, it is perhaps...

11 THE CHAIRMAN: Which would lead to -- I  
12 mean, you know, this is a very lengthy hearing in  
13 process, as you are aware.

14 MS. SWENARCHUK: Right.

15 THE CHAIRMAN: If I catch the drift of  
16 your argument, taken to its supposed conclusion, is  
17 where you are going ultimately to argue at the end of  
18 this hearing that the environmental assessment should  
19 be viewed by this Board as unacceptable under Section  
20 12(2)(a), I think it is, of the Act; and, if so, it is  
21 a fairly basic question?

22 MS. SWENARCHUK: That could be the  
23 argument.

24 THE CHAIRMAN: Well, I mean, I am just  
25 wondering whether or not we all want to sit here for



1 another year and a half or two years to get that  
2 argument at the end of the case, if that's the  
3 argument, because what I am trying to say is: You are  
4 entering into an area, Ms. Swenarchuk, where if what  
5 the panel is saying, studies have not in fact been  
6 done, you can't do the kind of studies that you are  
7 suggesting tonight or tomorrow--

8 MS. SWENARCHUK: That's right.

9 THE CHAIRMAN: --obviously. It is a  
10 factual thing, they are either done or they aren't  
11 done, and it may lead to a very serious question.

12 MS. SWENARCHUK: Yes.

13 THE CHAIRMAN: And if that's the serious  
14 question and that is the direction you are going,  
15 perhaps it is something we should consider at an  
16 earlier date than the end of the hearing.

17 MS. SWENARCHUK: I might just put it this  
18 way: That, of course, the Ministry is not the only  
19 party that will be presenting evidence before the  
20 Board.

21 THE CHAIRMAN: That's true.

22 MS. SWENARCHUK: Secondly, if you will  
23 recall our opening statements - and there is no reason  
24 why you should, it was so long ago, but I wrote it so I  
25 sort of remember it - you would recall that there were

1 certain positions we took in that statement with regard  
2 to the adequacy of the EA and we said at the time that  
3 we would not be arguing that the document should be  
4 rewritten before a hearing held, rather that it was in  
5 the public interest to hold the hearing and move on  
6 with the process. I think you could expect the same  
7 sort of approach to this question.

8 Frankly, it will be our position that the  
9 evidence led in this panel is not sufficient evidence  
10 on actual effects, that evidence on actual effects  
11 could have and should have been produced by the  
12 Ministry.

13 Where does that leave us? That leaves us  
14 with a question of how to remedy that problem in the  
15 future, and I think that that would be our direction.

16 THE CHAIRMAN: Or even during the course  
17 of this hearing?

18 MS. SWENARCHUK: I haven't turned --

19 THE CHAIRMAN: If it is a problem; in  
20 other words, through evidence brought in by other  
21 parties, if that is an ultimate -- you see, we are  
22 charged with --

23 MS. SWENARCHUK: Yes, I would say this,  
24 Mr. Chairman: It would certainly be our position that  
25 it is not open to the Ministry in reply to produce the

1 evidence on this question that it hasn't produced now;  
2 that is, I am not suggesting that the Ministry be  
3 essentially permitted to split its case.

4 If it were to lead such evidence in  
5 reply, of course we would have to insist on  
6 cross-examination and here we go again.

7 Presumably the evidence that the Ministry  
8 produces between now and Panel 17 at the end of its  
9 case is its case.

10 THE CHAIRMAN: Subject to what the Board  
11 permits to come in by way of reply.

12 MS. SWENARCHUK: Yes.

13 THE CHAIRMAN: The Board has taken, as  
14 you are aware, in a fairly long series of previous  
15 cases the position that the process encompasses more  
16 than just the EA document, it encompasses all the  
17 evidence that is adduced at a hearing which is admitted  
18 by the Board, not just the documentation submitted to  
19 the Minister under Section 5(1).

20 MS. SWENARCHUK: Yes, yes.

21 THE CHAIRMAN: That's a fairly clear  
22 position having been taken by the Board in the past.

23 MS. SWENARCHUK: Yes.

24 THE CHAIRMAN: Well --

25 MS. SWENARCHUK: You will appreciate

1       though that on something as fundamental as this  
2       difference, were the Ministry or any other party to  
3       come - it would be the Ministry - to come in on reply  
4       and essentially make the actual case it didn't make  
5       before, that all other parties who had prepared and  
6       presented their cases on the basis of this would be  
7       severely prejudiced.

8                   THE CHAIRMAN: Well, we are cognizant of  
9       at least the argument if not the fact, but I think we  
10      are at a place that, you know, some thought should be  
11      given to where this is leading because the Board is  
12      charged under the legislation with making essentially  
13      two decisions: One, on the adequacy of the  
14      environmental assessment, and that I think is where --  
15      is one of the questions being dealt with by you in this  
16      line of questioning.

17                   MS. SWENARCHUK: Yes.

18                   THE CHAIRMAN: And the second thing which  
19      follows from that is: Should the Board rule that the  
20      environmental assessment is adequate, then whether or  
21      not the undertaking should proceed.

22                   MS. SWENARCHUK: Right.

23                   THE CHAIRMAN: And, if so, with or  
24      without conditions of approval and what those  
25      conditions are.



1                   So there is a logical framework that's  
2   set out in the legislation under Section 12 and in view  
3   of a hearing that is literally taking years to  
4   complete, when we are dealing with one of the  
5   fundamental questions which is suggested as a result of  
6   your line of questioning, perhaps it is something that  
7   should be considered carefully at a much earlier stage  
8   than just argument at the end of a two-year hearing,  
9   particularly if it is a question that obviously can't  
10  be remedied easily.

11                   MS. SWENARCHUK: What are you suggesting,  
12  Mr. Chairman?

13                   THE CHAIRMAN: I don't know what I am  
14  suggesting, quite frankly, other than it is, you know,  
15  sort of an issue that has just come up right now and is  
16  troubling.

17                   I think what I will suggest is, is that  
18  the Board take a short adjournment at this time to  
19  discuss amongst itself some of the ramifications of  
20  what your line of questioning is leading to.

21                   MS. SWENARCHUK: Fine.

22  ---Recess taken at 9:50 a.m.

23  ---Upon resuming at 10:55 a.m.

24                   THE CHAIRMAN: Thank you, ladies and  
25  gentlemen. Please be seated.

1                   Ladies and gentlemen, the Board has  
2                   considered the matters which have arisen in the past  
3                   few minutes and has reached the following tentative  
4                   conclusions with respect to it in terms of how it  
5                   should be dealt with.

6                   Ms. Swenarchuk raised, through her  
7                   cross-examination of Panel 10, the issue indirectly of  
8                   what appears to be an admitted fact that the Ministry  
9                   did not, in the course of preparing its application,  
10                  commission specific studies on the actual environmental  
11                  effects of harvesting across the area of the  
12                  undertaking; instead the Ministry has structured its  
13                  evidence to deal with potential environmental effects  
14                  relying, for the most part, on existing knowledge and  
15                  studies.

16                  In response to questioning from the  
17                  Board, Ms. Swenarchuk indicated that the failure by the  
18                  Ministry to put in evidence to the Board on the actual  
19                  effects may go to the issue of the acceptability of the  
20                  environmental assessment.

21                  The Board is concerned that this  
22                  fundamental issue should not be left solely to argument  
23                  at the conclusion of the evidence of all of the parties  
24                  many months down the road and has decided to request  
25                  the parties to make submissions with respect thereto

1 immediately after the Board has heard submissions with  
2 respect to Mr. Castrilli's motion concerning the  
3 pesticides issue scheduled for May 8th, 1989.

4 In the meantime, it is our intention to  
5 proceed with the cross-examination of Panel 10.

6 Now, the Board realizes that this is  
7 somewhat unusual in the middle of a hearing to be  
8 dealing with an issue like this, but it is one of those  
9 issues that we feel has to be dealt with because it may  
10 revisit us at the end of the hearing in substantially  
11 the same form, and we would like the benefit of hearing  
12 submissions and argument by the parties on it at this  
13 stage.

14 MR. CASSIDY: Mr. Chairman, if I could  
15 ask for a point of clarification on that.

16 There are requirements with respect to  
17 the Notice of Motion that Forests for Tomorrow has  
18 filed, requirements of filing prepared written  
19 material. Are you going to require the same format of  
20 preparing written material and the same deadlines in  
21 respect of that for this matter?

22 THE CHAIRMAN: Well, I think we would  
23 like to hear from the parties on that question itself.

24 Obviously, part of this issue deals with  
25 a matter of law, the matter being the interpretation of

1 Section 12(2) of the Environmental Assessment Act. So  
2 there is no question that whatever guidance the  
3 jurisprudence can provide with respect to that question  
4 of law may or may not be helpful. I suspect however,  
5 from my limited knowledge, that you won't find much in  
6 terms of the jurisprudence on that Section of the Act.

7 In terms of the factual matters  
8 surrounding this issue, that could probably be dealt  
9 with in the absence of written submissions, but I would  
10 like to hear from counsel on those points.

11 MS. SWENARCHUK: Having raised this and  
12 seeing it turn into a matter of urgency for the Board,  
13 I hesitate to make this request but actually it is  
14 rather essential. My client won't be available to me  
15 in the month of May.

16 THE CHAIRMAN: Sorry, your client...?

17 MS. SWENARCHUK: My client will not be  
18 available to me for instructions during the month of  
19 May, and so my request would be that we hear this early  
20 in June.

21 THE CHAIRMAN: Okay. Certainly you are  
22 one of the principal parties involved in this issue and  
23 I think it is incumbent that we hear from you and your  
24 client on it, so I think that's not an unreasonable  
25 request.



1                   In terms of the issue, though, whether or  
2                   not there should be written submissions prior to  
3                   hearing the submissions in open forum, what do counsel  
4                   have to say about that?

5                   Mr. Tuer, perhaps you could...

6                   MR. TUER: Mr. Freidin wants to pre-empt  
7                   me to deal with the matter.

8                   THE CHAIRMAN: Very well.

9                   Mr. Freidin?

10                  MR. FREIDIN: Mr. Chairman, you indicated  
11                  at the outset that the Board has considered the matter  
12                  and has reached some tentative conclusions regarding  
13                  how to deal with the matter. I would ask --

14                  THE CHAIRMAN: Certainly not on the  
15                  issue, we haven't reach any conclusions on the issue.

16                  MR. FREIDIN: Oh, I appreciate that.

17                  THE CHAIRMAN: We are just dealing with  
18                  how we should deal with it.

19                  MR. FREIDIN: Right. And you indicated  
20                  that you had some tentative conclusions in relation to  
21                  that, and I would like to ask your direction as to  
22                  whether you would entertain submissions regarding that  
23                  tentative conclusion as to whether in fact the final  
24                  conclusion that you should make on this matter is that  
25                  it's premature to argue this matter in June.

1                   It is my submission that it is perhaps  
2           advisable not to deal with this issue at this time, but  
3           rather deal with it at a later date, if in fact it  
4           arises, and I say that because, in looking at my notes  
5           of the comments of Ms. Swenarchuk, there was no  
6           indication from her that she in fact was raising that  
7           issue, nor was there any indication that she was going  
8           to raise that issue at the end of the piece.

9                   And with your directions, I would like to  
10          perhaps have an opportunity to put my representations  
11          before the Board in an attempt to influence your  
12          decision -- your tentative decision to in fact delay  
13          any consideration of this particular issue.

14                   I think there may be other counsel here  
15          who might also would like to make submissions in that  
16          regard.

17                   THE CHAIRMAN: Well, let's -- before we  
18          just go to that point, why don't we just hear from the  
19          other counsel and see if they are in support of that  
20          position.

21                   Mr. Tuer?

22                   MR. TUER: Well, it follows in my view  
23          from what Mr. Freidin has said that the first thing  
24          that ought to be done is to have a clear enunciation of  
25          what the issues are that we are to address, and whether

1 that is done by Miss Swenarchuk or on the direction of  
2 the Board matters not, but I am quite happy to address  
3 any issue that is put to counsel.

4 But I want to hear what the issue  
5 themselves speak to in order to address the issue.  
6 Whether that occurs today or whether it occurs in June,  
7 I suppose, depends upon the nature of the issue.

8 THE CHAIRMAN: All right. Well, perhaps  
9 we will hear from other counsel and then we will give  
10 you I think an indication of what the Board thinks the  
11 issue is, and maybe the Board is misinformed, and we  
12 will certainly take direction from counsel if we are.

13 Ms. Seaborn?

14 MS. SEABORN: Mr. Chairman, I would like  
15 an opportunity to address the Board in the same vein  
16 that Mr. Freidin has addressed the Board, in the sense  
17 that your comments were prefaced by saying these were  
18 your tentative thoughts on how to deal with these  
19 issues.

20 I have some submissions to make as to  
21 whether or not the Board should be going that far at  
22 this stage in light of the context that Ms.  
23 Swenarchuk's comments were made, and I can do that  
24 after Mr. Freidin addresses the Board, if the Board is  
25 prepared to hear him on that.

1 MS. SWENARCHUK: I don't know if this  
2 will help at all, but if one of the issues is whether  
3 it is the intention of Forests for Tomorrow to argue at  
4 the end of this case that the evidence adduced by the  
5 Ministry is insufficient, I really cannot inform the  
6 Board at this time one way or the other what position  
7 we will take on that question.

8 THE CHAIRMAN: Well, okay. Any of the  
9 parties may address the Board at the end of the case -  
10 and it, of course, is their absolute right under the  
11 legislation on their view that the evidence put before  
12 the Board is insufficient for the Board to render a  
13 decision on the acceptability of the environmental  
14 assessment - you may argue for any number of reasons  
15 that the proponent has not met the test of  
16 acceptability under that section of Section 12.

17 And it is the view of the Board that if  
18 the Board was persuaded that such was the case, it  
19 would have no alternative but to render a decision on  
20 the basis that, in its view, the environmental  
21 assessment was not acceptable or, on the other hand, it  
22 could accept the environmental assessment as amended,  
23 or even in its original form without amendment.

24 Now, you may have any number of arguments  
25 or submissions to be made on the acceptability of the



1 assessment and the proper time for that is at the  
2 conclusion of all of the evidence. The Board fully  
3 recognizes this.

4                   Having said that, the issue came before  
5 the Board in a very indirect fashion - and we are  
6 certainly not suggesting for a moment, Ms. Swenarchuk,  
7 that you brought it before the Board in the manner in  
8 which it has evolved - but if the argument is going to  
9 be at the end of the case that the environmental  
10 assessment should be ruled unacceptable on the basis  
11 that studies were not conducted dealing with the actual  
12 environmental effects, and given the realization - and  
13 maybe the Board is factually wrong in this - that such  
14 studies could not be concluded and put before the Board  
15 prior to the end of the hearing, given the fact that  
16 the panel has indicated that such studies hadn't been  
17 done up to this point; if that were the case and this  
18 was the ground that Forests for Tomorrow was going to  
19 raise at the end of the case as to why the EA should be  
20 unacceptable, then it concerns the Board at this stage  
21 because that argument has sort of indirectly been  
22 raised through the cross-examination at this stage and  
23 factually things may not change between now and the end  
24 of the hearing some two years down the road with  
25 respect to whether or not those studies suggested by

1 Ms. Swenarchuk had been done. That is the basis of the  
2 Board's concern.

3 It is not in any way suggesting that  
4 parties may not have any number of other reasons that  
5 they may wish to challenge the acceptability of the EA  
6 on. It is this one particular issue dealing with these  
7 kinds of studies which apparently have not been done  
8 that if, Ms. Swenarchuk, your client is going to raise  
9 at the end of the hearing as the principal basis upon  
10 which the EA should be ruled unacceptable - unless we  
11 are wrong and you can suggest, or the Ministry can  
12 suggest that we should wait to the end of the case and  
13 maybe such studies will in fact be produced, et cetera,  
14 et cetera - it is something that won't change  
15 factually. It is something that happened one way or  
16 the other; they either were not done or were done, or  
17 can be done between now and the end of the hearing.  
18 Those three circumstances.

19 And if things aren't going to change on  
20 that basis and it is going to be raised at the end of  
21 the case in argument, it seems to the Board that that  
22 kind of argument can be raised at a much earlier stage.  
23 And if the Board should be persuaded that there is  
24 validity to those arguments, then perhaps it is a  
25 matter that should be dealt with prior to the

1 conclusion of all the evidence going in. And that is  
2 the basis of the Board's concern.

3 We are not concerned with any other  
4 grounds for challenging the acceptability of the EA.  
5 That will be a matter which can only be dealt with, in  
6 our view, properly at the conclusion of all the  
7 evidence going in because, as I mentioned earlier  
8 today, the Board considers the EA process as including  
9 all of the documents and all of the evidence admitted  
10 by the Board during the course of the hearing.

11 It is just that we are somewhat concerned  
12 that there won't be any further evidence during the  
13 course of the hearing dealing with studies on actual  
14 effects because they hadn't been done prior to the  
15 hearing and, presumably cannot be done during the  
16 course of the hearing, at least if I understand Ms.  
17 Swenarchuk, the type of studies that you are suggesting  
18 should or should not have been done.

19 And so that is the basis of the Board's  
20 concerns and that is why the Board is raising it at  
21 this point in time. And I don't know what the position  
22 at end of the hearing would be from your client, but if  
23 it is going to be on the grounds that indirectly arose  
24 today, then perhaps it is something we should be  
25 dealing with at an earlier stage.

1 MS. SWENARCHUK: Merely replying to the  
2 question of whether or not studies could be done. We  
3 haven't heard from the proponent that two years is not  
4 enough time to conduct certain studies, so...

5 THE CHAIRMAN: And the Board, by the way,  
6 is quite open to any suggestions that -- put it this  
7 way: The Board has indicated that perhaps such studies  
8 could not be done by the end of this hearing. The  
9 Board has no factual evidence on that whatsoever, it is  
10 just making it's mere speculation on the Board's part.

11 But if that were the case, then the other  
12 things following from what the Board has said to this  
13 point, in our view, follow. So that is the area that  
14 we are concerned with. Sorry.

15 MS. SWENARCHUK: Are you looking for  
16 comments from me now?

17 THE CHAIRMAN: Well --

18 MS. SWENARCHUK: I take it you are  
19 delineating that issue for the benefit of Mr. Tuer?

20 THE CHAIRMAN: That's right. I am  
21 delineating what the Board considers the issue to be  
22 and the circumstances in which it arose today but, more  
23 importantly, might arise at the end of the hearing.

24 MR. TUER: Well, it is such an important  
25 matter, Mr. Chairman, I don't think I'm prepared to



1 address it today. I would prefer to wait until a later  
2 date, perhaps in June.

3 THE CHAIRMAN: Well, we are not going to  
4 deal with it -- (a) we are not going to deal with it  
5 today, I think it goes out without saying we won't deal  
6 with it May 8th either in view of the fact that Ms.  
7 Swenarchuk won't be in a position to receive  
8 instructions from her client; we will have to deal with  
9 it at a later date.

10 But I think it is important that we at  
11 least decide to some extent how we are going to go  
12 about dealing with it, because if we put it off at this  
13 stage it is just going to come back and in two or three  
14 days or whatever, four or five days and we are still  
15 going to be dealing with procedurally how we should  
16 deal with it.

17 MR. TUER: Well, yes, and I think it  
18 requires a statement from the parties as to what their  
19 position is and I am prepared to do that by a date in  
20 May or June. If that is what is necessary. Or earlier  
21 for that matter, but not in the next two or three days  
22 obviously.

23 THE CHAIRMAN: You mean a position on the  
24 issue?

25 MR. TUER: Yes.

1                   THE CHAIRMAN: No, no, I am not looking  
2                   for a position on the issue at this point in time.  
3                   What we are looking for is how procedurally we should  
4                   deal with this; whether or not, for instance, written  
5                   submissions should in fact be elicited from the parties  
6                   and...

7                   MR. TUER: Well; I can think of a number  
8                   of reasons why written positions should be obtained  
9                   from the parties if for no other reason, that it makes  
10                  it available to the rest of the parties who were not  
11                  here. But, as I say, as you've now framed the matter,  
12                  it is such an important issue that I think it deserves  
13                  and merits the written which means thoughtful position  
14                  of the parties.

15                  THE CHAIRMAN: Okay. Mr. Freidin?

16                  MR. FREIDIN: All right. Well, I am not  
17                  too sure that --

18                  THE CHAIRMAN: Well, have I put the issue  
19                  clearly so that the parties, you know, have a fairly  
20                  clear understanding of what is concerning the Board?

21                  MR. FREIDIN: Yes, and I think I  
22                  understand that, Mr. Chairman.

23                  I would like to respond by again  
24                  indicating that when we get to the end of the case and  
25                  if someone at that stage raises whether the evidence is

1 sufficient to have the document be accepted, the Board  
2 is going to have to make that decision in light of what  
3 you, Mr. Chairman, have indicated constitutes the  
4 environmental assessment; that is, all the written  
5 evidence, all the oral evidence of all of the parties.

6 Now, at this stage we really have just  
7 started that process. How the Board views the position  
8 as to whether the document is acceptable, even if you  
9 confine your question to whether the document is  
10 acceptable because it doesn't have studies which  
11 quantify actual effects - I think that is really the  
12 nub of what Ms. Swenarchuk has said - but when you ask  
13 yourself that question: Is this document acceptable in  
14 light of a finding?

15 Let's assume you make a finding that it  
16 doesn't have any studies which actually quantify the  
17 actual effects which have occurred. In my submission,  
18 the Board really will not be in a position to answer  
19 that question on May the 8th or June the 8th and, in my  
20 respectful submission, won't be in a proper position to  
21 make that assessment until you have heard all the  
22 evidence.

23 THE CHAIRMAN: Okay, just stopping right  
24 there though. What about flipping that the other way?  
25 What would your submission be on the Board being able

1 to, on May 8th or June 8th or whatever date, reaching a  
2 conclusion that the environmental assessment is  
3 unacceptable because; not that it's acceptable, but  
4 that it is unacceptable--

5 MR. FREIDIN: I don't believe --

6 THE CHAIRMAN: --because these studies  
7 were not done in that fashion?

8 MR. FREIDIN: Well, it's a question --

9 MS. SWENARCHUK: Mr. Chairman?

10 MR. FREIDIN: I mean, I have submissions  
11 that I could make in relation to the evidence to date  
12 but, in my submission, if you just looked at that you  
13 are looking at a question in the air and I would say  
14 that you can't make that determination -- you couldn't  
15 come to that conclusion just based on that fact alone.

16 The proponent has an obligation under the  
17 Environmental Assessment Act to put forward evidence  
18 which it believes is in fact required to meet its  
19 obligations under the Act. The Ministry of Natural  
20 Resources firmly takes the position that it has done  
21 that and it will continue to do that.

22 Even if I go back to where I started. I  
23 don't think you can flip it that easy because I come  
24 back to the same basic submission: How the Board views  
25 the position of someone saying: It is unacceptable



1       because you didn't do any actual studies of a certain  
2       type, how you will view that will be influenced, it has  
3       to be influenced by all the evidence of all of the  
4       parties.

5                       Because what you are going to be -- we  
6       don't -- Ms. Swenarchuk admitted to you that she  
7       doesn't know what all the evidence of all the other  
8       parties is going to be and she, I think I understood  
9       her as saying: Well, really -- when you posed the same  
10      question to her, said: Well, there is the evidence of  
11      the other parties.

12                      So my bottom line is that you can't make  
13      a determination in the air that something is crucial or  
14      not crucial at this stage; you can only make the  
15      decision as to the acceptability of this document based  
16      on all of the evidence as you yourself have said and  
17      you shouldn't, in my respectful submission, consider  
18      whether -- you shouldn't be putting yourself in the  
19      position where you want to attempt to answer that  
20      question without all of the evidence, by picking out  
21      one submission that might be made by somebody and  
22      saying somehow that that has now taken on a completely  
23      different level of importance.

24                      The evidence as to actual effects, and I  
25      say the quantification of actual effects, is but one

1 piece of evidence or one type of evidence that the  
2 proponent could call.

3 Now -- and again, we have to wait until  
4 all the evidence is in. But I think I would like to  
5 make one comment about actual effects versus potential  
6 effects because it is the Ministry's position that, as  
7 I have indicated, that it has met the responsibility to  
8 call evidence and to meet the requirements of the  
9 Environmental Assessment Act:

10 Any environmental assessment, in fact I  
11 would think all environmental assessments deal with the  
12 question of potential environmental effects. When you  
13 are going -- in the case of an individual EA,  
14 particularly the construction or the erection of a  
15 capital structure within the environment, the whole  
16 environmental assessment deals with what are the  
17 potential environmental effects of building that  
18 structure and how are you going to go about mitigating  
19 it, minimizing it, preventing it.

20 So to suggest as a starting point that  
21 dealing with potential effects is somehow wrong or is  
22 misdirected in fact is something -- is a proposition  
23 that I couldn't agree with. Secondly, is it premature  
24 to deal with this now?

25 Well --

1 THE CHAIRMAN: And it may be.

2 MR. FREIDIN: Well, it may be.

3 THE CHAIRMAN: And that is why I say the  
4 Board reached earlier today a tentative conclusion that  
5 perhaps it should be dealing with it only to prevent a  
6 situation whereby we go down the road another two  
7 years, the same issue surfaces at the end in argument  
8 and if the Board at that point in time felt that  
9 argument was sustainable, then the Board may have, in  
10 effect, wasted a lot of public funds, et cetera, in  
11 getting to the point when the issue could have been  
12 validly considered at an earlier date.

13 And your argument I think is going  
14 towards the proposition that even if we wanted to  
15 consider it at this date it may be premature because of  
16 the process that the Board agrees with to a large  
17 extent--

18 MR. FREIDIN: That's correct.

19 THE CHAIRMAN: --that the environmental  
20 assessment includes not only the documentation but all  
21 of the evidence through the course of the hearing.

22 MR. FREIDIN: Exactly. I am trying to  
23 convince the Board that it's tentative conclusion to  
24 deal with this issue in May or June remain just that,  
25 that it not be a firm conclusion.

1                   That is why I wanted -- asked for the  
2                   opportunity to make these submissions before you made  
3                   that decision.

4                   THE CHAIRMAN: That is why we are asking  
5                   for them.

6                   MR. FREIDIN: Okay. Then I will continue  
7                   then, and some of these remarks are probably similar to  
8                   remarks I might make if the Board finally decides that  
9                   it wants to hear this matter, but I think I have to  
10                  make these comments so you understand why I believe it  
11                  should be dealt with in the fashion you've tentatively  
12                  indicated.

13                  The evidence of this panel and the  
14                  evidence of the other panels to date have not, with  
15                  respect, only dealt with the potential effects of  
16                  timber management.

17                  Firstly, you will recall this whole  
18                  comment of this phrase potential effects was perhaps  
19                  highlighted by me at the opening of this panel to  
20                  indicate that we were going to talk about potential  
21                  effects and that a lot of the evidence identified  
22                  potential effects because it is the Ministry's position  
23                  that by and large those potential effects are  
24                  preventative or adequately minimized through normal  
25                  timber management practice. So, in that context, it



1 was necessary to talk about or use the phrase potential  
2 effects.

3 Has the Board heard any evidence about  
4 actual effects in timber management to date? I would  
5 suggest to you, Mr. Chairman, that you have heard  
6 extensive evidence about actual effects. You may not  
7 have heard evidence which quantifies that over the area  
8 of the undertaking rutting has occurred on "x" number  
9 of hectares in "y" number of management units for a  
10 total of this over the past number of years. You don't  
11 have that kind of evidence, but you have got evidence  
12 of actual effects.

13 You have heard, for example, all of Panel  
14 5 dealing with economic effects; you have heard actual  
15 environmental effects, at least the proponent's view of  
16 those.

17 You have heard evidence in Panel No. 4  
18 about actual environmental effects in terms of past  
19 practices when Mr. Armson gave evidence about the SOARS  
20 report.

21 You heard evidence from this panel about  
22 actual effects and seen pictures of actual effects.  
23 You have heard the witnesses indicate whether it was in  
24 terms of compaction or whether it was rutting, that  
25 these things do occur. What you haven't got is some

1 sort of evidence that quantifies it in some sort of  
2 fashion.

3 So, I go through that just to indicate  
4 that in the proponent's view there is evidence of  
5 actual environmental effects and when you consider what  
6 way you actually want to proceed on this matter, I  
7 don't want you to proceed on the basis that somehow,  
8 for some reason, you have a belief that that really is  
9 all you have heard about is potential effects. I want  
10 to make it quite clear that it's the Ministry's  
11 position that you have heard about actual effects.

12 THE CHAIRMAN: No, and if the matter were  
13 argued obviously various parties would be taking  
14 different positions on that issue as well.

15 MR. FREIDIN: Right. Now, just  
16 another -- or another thing that has gone on during  
17 these hearings that has assisted or provided the Board  
18 with an opportunity to perhaps understand the evidence  
19 which is occurring are the site visits.

20 The Board and those parties who have  
21 wanted to have been in the field and have observed  
22 actual timber management activities taking place. That  
23 evidence will assist the Board and the other parties to  
24 understand or to appreciate the evidence of all parties  
25 in relation to these activities.

1                   And, as the Board is aware, the Board has  
2 gone to areas not only where the proponent suggested,  
3 other parties have suggested and, I would submit, have  
4 suggested quite clearly and explicitly that they wanted  
5 to go a certain site because they felt that that would  
6 be perhaps a not so good example of good timber  
7 management practice. And the Board has gone to those.  
8 So I just wanted to refer to that.

9                   Now, if Ms. Swenarchuk or anybody else  
10 feels that that a term or condition at the end of the  
11 piece might be appropriate that some sort of studies  
12 been done, that some sort of monitoring take place,  
13 that is exactly the sort of thing that I would expect  
14 that parties would have in mind.

15                  I mean, the proponent has in Panel No. 16  
16 pulled together a number of commitments which have been  
17 made to date and some new ones -- I mean, commitments  
18 made to date in the evidence and there will be some  
19 further commitments which will sort of only arise  
20 through evidence in Panel 16 as to what sort of  
21 monitoring should be done in relation to environmental  
22 effects, what sort of reporting requirements are  
23 appropriate in terms of the results of those monitoring  
24 programs, and I am referring to the effectiveness  
25 monitoring that you have heard about, I am talking

1 about the population monitoring that Dr. Euler has  
2 spoken about.

3 Those sorts of things, in my submission,  
4 can be dealt with in that fashion and I would think  
5 that would be an appropriate place to deal with those.  
6 But perhaps I shouldn't even have gotten into that  
7 because that perhaps sort of ignores the issue which  
8 you have raised, but I felt it was important for me  
9 just to make that observation.

10 And should a particular -- should the  
11 Board make a decision that a particular type of study  
12 be done now - again, between now and the end of the  
13 hearing - the proponent has the obligation and the  
14 responsibility to put its case in in a fashion that it  
15 believes meets the obligations of the Act.

16 To suggest at this stage that a study or  
17 a particular kind of study is essential, going back I  
18 think to the initial position, before you have really  
19 heard all of the evidence and perhaps evidence or  
20 alternative ways of dealing with the same sort of  
21 concern is going to put the Board in the position where  
22 you are going to be trying to make a decision without  
23 really having heard all the evidence which, in my  
24 submission, it is essential for the Board to keep in  
25 mind and to consider when you make that type of



1 decision.

2 So those are the submissions that I  
3 wanted to make, Mr. Chairman. And just to repeat my  
4 submission, I don't believe that -- I would ask or  
5 submit that the Board not make its tentative conclusion  
6 a final one. In effect, I am saying that I don't  
7 believe any date should be set for any motions or any  
8 arguments of any sort. Well, hopefully that my  
9 comments, perhaps comments of other counsel, can  
10 persuade the Board that the views that I have put  
11 forward this morning are acceptable to the Board and  
12 they would adopt them as the position of the Board.

13 THE CHAIRMAN: Thank you, Mr. Freidin.

14 Do other counsel wish to respond to that.  
15 Ms. Seaborn?

16 MS. SEABORN: Yes, I would like to make  
17 some comments along the same line as Mr. Freidin.

18 THE CHAIRMAN: Very well.

19 MS. SEABORN: Mr. Chairman, we agree with  
20 Mr. Freidin's position that your conclusion on this  
21 matter in terms of how it should be dealt with should  
22 remain tentative. We don't see how the Board at this  
23 stage can deal with the adequacy of MNR's evidence  
24 without hearing all the evidence.

25 The major point I would like to make -

1 because I don't want to repeat what Mr. Freidin has  
2 said - is that, as a practical matter, would a ruling  
3 by the Board on this issue be of assistance in any  
4 event?

5 First of all, in even arguing or putting  
6 forward a motion before the Board, I don't see how the  
7 parties could even make submissions at this time as to  
8 whether or not MNR's approach on looking at potential  
9 effects versus actual effects is an appropriate way to  
10 proceed. I don't see how the parties, without hearing  
11 all the evidence or without presenting its own case,  
12 could even come to that determination in order to make  
13 submissions on a date in June. And that is the first  
14 practical problem I see.

15 The second practical problem I see with  
16 is: What would be the effect of a ruling? As I  
17 understand the Board's concern is that you are saying,  
18 if Forests for Tomorrow is going to, at the end of the  
19 hearing, argue that during Panel 10 MNR should have  
20 introduced more studies or specific studies dealing  
21 with actual effects, let's hear that motion now instead  
22 of waiting and hearing -- waiting until the end of the  
23 hearing, and that is what I understand is the Board's  
24 concern.

25 THE CHAIRMAN: Assuming that nothing can

1 be done between now and the end of the hearing  
2 concerning such studies.

3 MS. SEABORN: That's right.

4 THE CHAIRMAN: I am making that  
5 assumption.

6 MS. SEABORN: Now, if we look at the  
7 Board's concern in another context - and that's why I  
8 say as a practical matter I don't think it makes sense  
9 to deal with this issue now - is that, we could go  
10 ahead on a date in May or June, make that  
11 determination, two weeks later another party who isn't  
12 here today could get up and cross-examine and they  
13 could raise an issue in their cross-examination that  
14 may leave a doubt in the Board's mind as to whether or  
15 not, at that particular point in time, that party could  
16 also get up and argue:

17 We don't think the hearing should  
18 continue, we don't think that MNR should receive an  
19 approval and this is something we are finding out now,  
20 but we don't want to wait until the end of the hearing  
21 to make that argument.

22 My concern is that this approach could  
23 put the Board in a position that at any future stage in  
24 the hearing the Board would be saying to parties: Tell  
25 us now if you are going to argue at the end of the

1 hearing that this portion of the evidence was  
2 inadequate, because we don't want to hear the rest of  
3 the evidence, if you've got enough information now,  
4 tell us your concern now and we will stop the hearing.

5 And that's why I say that, as a practical  
6 matter, I don't think it is worthwhile for the Board to  
7 spend time making a decision on something that, I might  
8 add, I don't think has been brought forward in a formal  
9 way by Forests for Tomorrow.

10 There are many reasons for parties  
11 raising concerns in cross-examination, and I would  
12 submit that one of the major reasons of calling into  
13 question another party's evidence is so that at the end  
14 of the day, when you call your own evidence, you want  
15 to contrast what their witnesses say, you also want to  
16 look at appropriate terms and conditions.

17 And so I would urge the Board to consider  
18 that just because a party brings an issue out in  
19 cross-examination that causes the Board concern, that  
20 does not mean that at the end of the hearing that party  
21 is going to argue that no approval should be granted.

22 It may be that they are going to use that  
23 evidence and put in their own case in order to argue  
24 that the way to deal with, in this example - and I  
25 don't know what Ms. Swenarchuk has in mind - but as an



1       example, say the way to deal with actual effects is to  
2       have a particular term and condition placed upon the  
3       Ministry so that in the future they do "x", "y" and  
4       "z".

5                       And I think those are my submissions on  
6       that issue and I would urge the Board that it is not  
7       necessary and not practical to go ahead and set a  
8       motion date on this issue and it may not achieve  
9       anything, even if a ruling is made by the Board.

10                      THE CHAIRMAN: Thank you.

11                      Mr. Tuer, do you want to add anything at  
12       this point?

13                      MR. TUER: Well, I go back to what I said  
14       originally, Mr. Chairman, as to the finding of what the  
15       issue is that we are addressing.

16                      If it is the position of Ms. Swenarchuk  
17       that admissions have been made by the panel that puts  
18       the -- so to speak, puts the proponent out of court,  
19       then I think it should be dealt with.

20                      Mr. Freidin and Ms. Seaborn have made  
21       submissions to you as to whether or not, for example,  
22       addressing that question is premature. Now it may be,  
23       it may not be, I don't know; I want to think about  
24       that. That is one of the matters which I believe  
25       deserves to be addressed. That may be the end of the

1 matter right there, it may be premature to address it,  
2 to consider the matter at this time. I don't know.  
3 But if, based on admissions made to date, the argument  
4 is there and Ms. Swenarchuk or others intend to raise  
5 that, then I think it should be addressed.

6 And if in fact the Board concludes that  
7 on the basis of what has been said and is not going to  
8 be corrected or may be impossible of correction, then  
9 the Board has, of course, a course of procedure which  
10 it can follow and it certainly does not mean waiting  
11 another two years to follow it or may not.

12 But again, these are all matters that I  
13 think have to be thought through and addressed in  
14 submissions at a later date, not today. I am not  
15 prepared to address those matters today. I may stand  
16 here a month from now and say it is totally  
17 inappropriate for the Board to even consider this  
18 matter at this time, it is premature.

19 But the whole thing again, in my  
20 submission, comes back to whether anybody is taking the  
21 position -- any party or any interested person is  
22 taking the position that certain admissions have been  
23 made in the evidence which puts the proponent "out of  
24 court".

25 THE CHAIRMAN: Thank you.

1 Any further submissions at this time?

2 Mr. Freidin?

3 MR. FREIDIN: I want to make it clear  
4 that one of the reasons that I don't believe the Board  
5 can decide this issue now as to whether it needs  
6 evidence re actual effects, because if it does need  
7 such evidence about actual effects, whether that  
8 evidence can only be obtained through scientific  
9 studies or whether the Board accepts the evidence of  
10 this panel in terms of their expertise, their  
11 experience, whether that is a satisfactory alternative,  
12 you have to hear that evidence.

13 So I think -- you know, I don't think you  
14 should proceed on an assumption that somehow this kind  
15 of scientific study is essential.

16 THE CHAIRMAN: The Board is making no and  
17 has not even dealt with itself with any aspect of the  
18 merits of the argument as to whether or not that kind  
19 of information or studies are or are not required,  
20 necessary, et cetera.

21 I think all the Board was trying to get  
22 at this morning was articulated to some extent by Mr.  
23 Tuer in his last remarks and that is: If it is an  
24 issue that is of some importance and will be raised  
25 further down the road in essentially the same form, is

1 it the type of issue that should be dealt with at an  
2 earlier stage if in fact it can be, No. 1, and I guess  
3 the secondary question, if or not it should be.

4 And that was a concern raised by the  
5 Board arising out of the direction of Ms. Swenarchuk's  
6 questioning and it is something the Board felt it  
7 should put to the parties at this time.

8 As I say, our statement to you a few  
9 minutes earlier was of a tentative nature. We  
10 ourselves haven't reach any firm conclusions and wanted  
11 to hear from the parties in a preliminary submission  
12 way, which we have now just completed.

13 I think we won't make any further  
14 pronouncements on this matter at this time because we  
15 want to consider further what has been said within the  
16 last few minutes.

17 Well, sorry, Ms. Swenarchuk, I guess from  
18 time to time these issues do arise, perhaps not by your  
19 own design always, but they nevertheless arise. I  
20 think we can perhaps get back to where we were.

21 I suppose we intend to continue on with  
22 the cross-examination until, say, 12:30 and then we  
23 will break for lunch.

24 MS. SWENARCHUK: Question 2.

25 THE CHAIRMAN: We are at Question 2 on



1 page 47; is that correct?

2 MS. SWENARCHUK: No, we are on Question 2  
3 at the beginning of page 1 of 24. I'm referring to my  
4 notes, Mr. Chairman.

5 THE CHAIRMAN: Oh.

6 MS. SWENARCHUK: Q. Well, Mr. Hynard,  
7 you testified with respect to, amongst other issues,  
8 the windthrow problem with black spruce. What is your  
9 experience as a forester in dealing with black spruce?

10 MR. HYNARD: A. I don't have experience  
11 as a forester dealing with black spruce.

12 Q. Did you write the witness statement  
13 from which you testified?

14 A. Yes, I did.

15 Q. You did, okay. Now, I noted from  
16 your CV at page 30 that you believe that foresters must  
17 consider equally the factors that make investments  
18 productive with the factors that make land productive.

19 Now, do you agree that timber management  
20 planners should consider economic factors when deciding  
21 on timber management practices?

22 A. Yes, I do.

23 Q. And exactly what economic factors do  
24 you consider should be taken into account?

25 A. Well, I think in setting the

1 silvicultural groundrules that they should consider  
2 factors like cost of treatment, the outcome of such  
3 treatment, the risk of failure of such treatment in  
4 comparison to the other options that are available to  
5 them.

6 Q. When you talk about outcome, are you  
7 actually attempting to look at economic factors in  
8 terms of the volume of wood to be produced by the  
9 silvicultural treatment?

10 A. That would be the ideal, yes. If one  
11 could compare two treatment options on the same site  
12 and compare those factors of cost, risk of failure or  
13 the necessity to retreat and the outcome -- the final  
14 outcome at rotation age, that would be the ideal.

15 Q. And is that now done?

16 A. It is done to some degree. It is not  
17 possible to know the final, final outcome without  
18 seeing it. The yield tables that exist in Ontario are  
19 essentially those based on natural or wild stands, not  
20 based on stands that originate from silvicultural  
21 treatments.

22 But, yes, the forester's best judgment of  
23 the outcome -- yes, he would consider that.

24 Q. Do you consider the value of the  
25 volume of wood to be extracted by the harvest and

1 consider that relative to the cost to the Ministry of  
2 the silvicultural treatment to follow?

3 A. The value of the volume of wood, was  
4 that your question?

5 Q. Yes.

6 A. There are a number of ways of doing  
7 that kind of analysis and I think you have to look at  
8 your own particular perspective.

9 So, for example, I am a Ministry forester  
10 and I am spending public funds to grow a crop of timber  
11 and that the purpose of that is to provide for a  
12 contribution to Ontario's economy through the forest  
13 industry. And so, yes, the value of that wood that is  
14 going to be produced is part of that. It's true, too,  
15 that there are a lot of other --

16 Q. Can I just ask you there: Do you  
17 attempt to estimate the value of that wood to the  
18 company that extracts it?

19 A. Oh, sorry, to the company that  
20 extracts it. If I were a company forester I would  
21 certainly take a close look at that, yes.

22 Q. But as a -- you are in a Crown  
23 management unit; are you not?

24 A. I am.

25 Q. So as an MNR forester administering

1 Crown management unit on which presumably private  
2 companies cut; correct?

3 A. That's correct.

4 Q. In your economic analysis you do not  
5 take account of the -- as I say, the value of the wood  
6 to the company versus, for example, the cost of  
7 silvicultural treatments to the Ministry; is that  
8 correct?

9 A. I don't look at it from the value,  
10 the profit margin that the company might have  
11 associated with the harvest of that wood. No, that's  
12 not normally part of my analysis.

13 Q. Okay. And I take it it's not  
14 normally part of the analysis of any Ministry forester;  
15 is that right, including on FMA areas?

16 A. No, I wouldn't be so definitive about  
17 that. I am not sure just which aspects they might look  
18 at at any one time. Of course, if you are growing a  
19 crop of timber, you want to be sure that that crop of  
20 timber will in fact be merchantable, that it will be  
21 utilizable, that it is likely to be utilized.

22 The actual value to the company going in  
23 that mill door minus the cost of delivering that wood  
24 there, no, that's not something that I look at, but  
25 there are other foresters who look specifically at



1       that.

2                       Q.   And where would those foresters be?

3                       A.   Well, if I were a company forester I  
4       would look very closely at that.

5                       Q.   Right. Within the Ministry, I take  
6       it, foresters do not normally look at that; is that  
7       right?

8                       A.   I wouldn't be definitive about that,  
9       but certainly I don't.

10                      Q.   Mr. Oldford, acting Director of  
11       Forest Resources, with respect, for example, to harvest  
12       operations on FMAs, if we can just review for a moment.  
13       The Ministry subsidizes the costs of road building and  
14       silvicultural treatments on FMAs; is that not right?

15                      MR. OLDFORD: A. The Ministry - and we  
16       don't use the word subsidize, because it's not a  
17       subsidy - the Ministry--

18                      Q.   Pays the cost?

19                      A.   --pays to the company the cost that  
20       the Ministry would normally incur in it was undertaking  
21       the business. Now, with your permission I would like  
22       to address the question that you were asking Mr.  
23       Hynard.

24                      Q.   That is what I am asking you to  
25       address.

1                   A. We have in Ontario a system whereby  
2 the Crown dues are indexed to the price of products.

3                   Q. Okay. Now, let's just make sure we  
4 clarify all the terms here. By Crown dues, you are  
5 referring to stumpage now; is that right?

6                   A. That is the rates that the company  
7 pays to the province for the wood that it harvests.  
8 Now, I don't have the document with me today, but if  
9 somebody -- if you were interested in exploring that at  
10 a later date that could be done.

11                  Q. The schedule of stumpage rates; is  
12 that what you are referring to?

13                  A. Yes, and the formula which I am  
14 generally aware of, but not intimately familiar with,  
15 that sets the various rates that stumpage is paid on  
16 and that rate fluctuates with the selling price of the  
17 products.

18                  Q. Well, that would be helpful, Mr.  
19 Oldford, and I would appreciate receiving that  
20 document.

21                  Can we just go a little further now.  
22 Again, on an FMA -- I call it a subsidy, you don't; we  
23 won't argue about that at this point - but in any  
24 event, the Ministry pays certain funds to FMA holders  
25 related to road building and silvicultural treatment;

1 is that not correct?

2 A. That is correct.

3 Q. And is it also correct that in  
4 calculating and arriving at the funds to be paid to the  
5 FMA holders for those purposes, the Ministry does not  
6 take into account the value of the wood to be extracted  
7 by the company?

8 A. That is correct. And I would like to  
9 add just a little bit more to your first statement.  
10 The amount of money that we contribute to FMA roads is  
11 provincially a small amount as compared to the total  
12 amount of roads built on FMAs.

13 And when the forest management agreements  
14 were first signed in Ontario in 1980 we recognized the  
15 need throughout the province to access some of the  
16 oldest timber and the FMA Roads Program was entered for  
17 that purpose.

18 Q. I think the Board has heard a history  
19 of the development of the FMAs. Just one last question  
20 in this area then: The timber management plan  
21 developed in an FMA presumably does not include  
22 references to the economic value of the wood to be  
23 extracted; is that right?

24 A. Not direct references, no.

25 Q. There are indirect references?

1                   A. Well, the fact that we have a timber  
2 management plan for, say, the Spruce Falls Forest and  
3 the Town of Kapuskasing as a Spruce Falls pulp and  
4 paper mill, I don't believe that one would need to draw  
5 the parallels very clearly in the plan. The forest  
6 industry is a major contributor there and that's the  
7 raison d'etre for that community.

8                   Q. But I am asking specifically about  
9 relative economic values of money paid to the FMA  
10 holder versus value of wood extracted, and I simply  
11 want to be clear that within the plan itself, as within  
12 the forest management agreement itself, there is no  
13 record of the value of the wood to be extracted?

14                  A. That's a fair statement.

15                  Q. Following from that, we see now that  
16 the value is not noted in the plan. Is the value of  
17 the wood extracted in fact calculated by the Ministry  
18 or known to the Ministry?

19                  A. When you say the value of the wood  
20 extracted, could I ask what you mean by that value,  
21 because I guess I could say that the value of the wood  
22 extracted is reflected in the formula that we use to  
23 determine the stumpage rate because stumpage rates are  
24 relative.

25                  Q. Fair enough, Mr. Oldford.



1                   A. And depending the environment that  
2 the company is working in - and when I speak of the  
3 environment, I'm speaking of the business environment -  
4 you may have a very high stumpage rate or you may have  
5 a very low stumpage rate. There is a degree of  
6 relativity there that one has to consider.

7                   Q. So within an FMA the value of the  
8 wood is known to the Ministry through the stumpage  
9 rates paid?

10                  A. Yes.

11                  See, I was thinking of value, Mr.  
12 Chairman, in the context of the value of the wood as a  
13 contributor to the production of a certain product,  
14 like newsprint, that might sell at a \$1,000 a tonne and  
15 I know that a cord of wood produces about a ton of  
16 newsprint. I wasn't thinking of really the nominal  
17 value that is applied to wood through some form of  
18 stumpage, and that varies right across Canada.

19                  And I guess anyone that's aware of some  
20 of the issues that have been generated nationally in  
21 the last few years has an appreciation for just how  
22 much stumpage varies nationally.

23                  Q. When the province sets the -- or  
24 negotiates with the company the rates to be paid under  
25 the FMAs, does it consider in setting those rates the

1 value of the wood or the stumpage that the company will  
2 be extracting?

3 A. No, it really considers - and to  
4 re-emphasize that - the cost that the Crown would incur  
5 carrying out the same treatment.

6 And I would like to point out to the  
7 Board that the rate that we pay the companies for these  
8 various treatments, in my experience, is no more than  
9 what it would cost the Crown if it conducted that work  
10 and, through innovation since the signing of the FMAs,  
11 in a lot of cases less and, in most circumstances, less  
12 and probably much less than the actual cost to the FMA  
13 to conduct the work.

14 Q. Now, is there a document that would  
15 explain for us the factors that the Ministry takes into  
16 account in setting the FMA payment rates?

17 A. Probably not. I remember being on  
18 the first negotiating teams for the first FMAs in  
19 Ontario -- I said teams, team.

20 I was very much involved with setting the  
21 rates on the Upper Spanish FMA and at that time, in  
22 1979/1980, what we did was we looked at the operations  
23 that we were undertaking as a Ministry, the cost of say  
24 mechanical site preparation with a Brac cultivator. We  
25 looked at our actual costs and then we applied an

1 administration factor on that and that's the cost that  
2 went into the FMA agreement.

3 Now, on the other hand - and this is  
4 interesting - the cost for tree planting, when we  
5 looked at that, there was tremendous variation right  
6 across Ontario depending on the resources that were  
7 available in the various Ministry districts to  
8 undertake the tree planting. For instance, Gogama had  
9 very low cost because it had a work force right there.

10 In that case, we thought that it would be  
11 better to set one rate for tree planting and that was  
12 the approach that we took, a rate right across the  
13 province.

14 Q. Would it be possible for you to give  
15 us a further indication of all the variables that the  
16 Ministry looks at in setting the payment rates under  
17 the FMAs?

18 A. Well, right now for instance --

19 Q. So one is the cost that the Ministry  
20 would incur in carrying out road building itself,  
21 another you say is a given rate for tree planting  
22 across the province.

23 A. Excuse me, I did not mention road  
24 building. If we could deal with the silvicultural  
25 costs first.

1                   We are negotiating a number of --  
2       renegotiating the groundrules on a number of FMAs right  
3       now. To a degree we look at the historical cost that  
4       is in the document and where, in the opinion of the  
5       Crown, we feel that we have a good rate, even though we  
6       know that the rate might even be higher for us and the  
7       company is willing to adopt the rate that is in there,  
8       we don't spend a lot of time arguing about it.

9                   On the other hand --

10                  Q. Excuse me, you are talking now about  
11       silvicultural rates?

12                  A. Silvicultural rates.

13                  Q. And how would those have been set  
14       originally?

15                  A. They would have been set originally  
16       based on the Ministry's cost.

17                  Q. Fine.

18                  A. But, for instance, the Ministry does  
19       not continue to do silviculture on the FMA past a  
20       certain, say, phase-in period, so we might not have  
21       direct knowledge of what the rate for that particular  
22       treatment is on that FMA at that -- you know, in this  
23       coming year, but we do have lots of work ongoing in the  
24       province on Crown management units.

25                  So right now, if I was renegotiating



1 groundrules with the company, I would look to Ministry  
2 costs on Ministry Crown management units to verify  
3 those rates before I entered into exact rate setting.

4 So we still have a window on that  
5 business and we have it through our Crown management  
6 units.

7 Q. So that's one variable you take into  
8 account in setting silvicultural rates?

9 A. Correct.

10 Q. What about road building rates, how  
11 are those determined?

12 A. Road building rates really are a lump  
13 sum payment per kilometre of road. The exact dollars  
14 for primary and secondary I can't quote, but in the  
15 range of 50,000 and 15,000.

16 Q. And higher?

17 A. Just probably a little bit higher in  
18 both those figures. I can acquire both of those for  
19 you exactly.

20 But in both instances, and based on my  
21 experience gleaned when I was on the company side in  
22 road construction and based on my experience when I was  
23 with the MNR and involved in road construction, the  
24 rates that we're paying to the industry are nominal to  
25 say the least.

1                   Also, Mr. Chairman, our monies paid under  
2                   the FMA program for road construction have been  
3                   declining very rapidly as we have achieved our  
4                   objective of accessing old forest and also as a result  
5                   of not having available as much money as we could put  
6                   into that activity. When we have got the choice of  
7                   funding silviculture and funding roads, we fund  
8                   silviculture.

9                   For instance, in this fiscal year, we  
10                  have about \$17 to \$18-million total in FMA roads for  
11                  the Province of Ontario. We have 30 FMAs now. Some  
12                  years ago when we had much fewer than 30 FMAs, we had  
13                  probably twice to two and a half times as much money.

14                 So the message to leave there is in total  
15                 FMA road costs, the Province of Ontario is in there in  
16                 a nominal sort of way, and there are some really good  
17                 advantages for us being in there, in that sometimes  
18                 when we require a road to be modified in its  
19                 construction or moved a little bit to accommodate some  
20                 other important value, that is very purposeful.

21                 Q. So you are saying that overall the --  
22                 if I understand you correctly, the FMAs that are being  
23                 negotiated now will have lower lump sums, to use your  
24                 phrase, payable for road building than the FMAs that  
25                 were negotiated earlier; is that right?

1 Is that generally the case now?

2 A. That is correct.

3 Q. All right. How do you arrive at the  
4 lump sums to be paid?

5 A. How do we arrive at the rate per  
6 kilometre?

7 Q. Yes.

8 A. I would have to go back and check on  
9 how we arrived at it in the first instance.

10 Actually the rate that we are paying per  
11 kilometre is much less than what the actual cost is, so  
12 we don't spend a lot of time dealing with that rate on  
13 an annual basis.

14 Like, we don't go out now and look at  
15 what it is going to cost us to build a kilometre of  
16 road and then go back and change the rate. We did  
17 change the rate on secondary roads back some years and  
18 I believe Mr. Hynard could speak specifically to that  
19 one.

20 Were you the FMA coordinator at that  
21 time?

22 MR. HYNARD: A. I am sorry, Gord, could  
23 you repeat the question?

24 Q. Excuse me, but maybe I will ask the  
25 questions.

1 A. All right.

2 Q. Can someone on the panel give me a  
3 list of the variables taken into account when the  
4 Ministry negotiates road lump sums to be paid per  
5 kilometre to an FMA holder?

6 A. Certainly I can't. That rate is a  
7 set rate, it's a fixed rate.

8 Q. How is it fixed?

9 A. It's fixed -- it's stated in the  
10 agreement exactly what that rate is for that term.

11 Q. Yes, I realize that. The question  
12 is: How does it get to that point?

13 A. Yeah. Like Gord, I would have to go  
14 back and check the historical setting of the original  
15 rate back in the late 1970s when Mr. Armson negotiated  
16 the agreements with the original agreement holders.

17 I think it would be necessary to do that  
18 to know the basis upon which that rate was set. It is  
19 true that rate is considerably below the cost of  
20 actually constructing the roads themselves.

21 Q. In all cases?

22 A. I believe so, yes.

23 Q. Perhaps you could give me that  
24 information tomorrow morning, or would that be  
25 possible, or next week?



1                   A. Oh -- I will let you know tomorrow  
2 morning what we can do for you.

3                   MS. SWENARCHUK: Mr. Freidin, you know,  
4 at your convenience I would like to have that  
5 information.

6                   MR. FREIDIN: Yes, I understand you want  
7 the factors --

8                   MS. SWENARCHUK: The factors taken into  
9 account by the Ministry in setting road lump sums under  
10 FMAs.

11                  MR. FREIDIN: All right.

12                  MR. OLDFORD: Mr. Freidin, if I might. I  
13 did not say that there were any factors taken into  
14 account, what I said is the Ministry pays a lump sum  
15 payment for FMA roads that it agrees to, primary and  
16 secondary.

17                  MS. SWENARCHUK: Q. But the rate isn't  
18 the same in each agreement; is it?

19                  MR. OLDFORD: A. The rate is the same in  
20 all of the agreements.

21                  Q. Well, I have to go back and check the  
22 agreements in my office, I wasn't aware of that.

23                  A. And I haven't been reading the  
24 agreements lately, like I haven't looked through all 30  
25 agreements, but the rate I believe used to be the same,

1 but we know the rate that we are paying is so much  
2 below the actual cost where we are not really  
3 interested in saying the factors relate to this and  
4 that.

5 For instance--

6 Q. Well...

7 A. --we are not in to funding bridges  
8 and it is very difficult to build a road that spans a  
9 river without having a bridge in the middle.

10 Q. Agreed.

11 MS. SWENARCHUK: I don't know if that  
12 means, Mr. Freidin, that I am not going to get an  
13 answer about factors, but I assume I will get some  
14 information on how the rates are set?

15 MR. FREIDIN: Well, we will respond and  
16 advise you whether the evidence would be any different  
17 than as given by Mr. Oldford and Mr. Hynard.

18 MS. SWENARCHUK: Well, at this point  
19 though, what has not been said is how the rate, the  
20 lump sum is set. If there isn't a lot of variables, that  
21 is fine, but there is still going to be some  
22 decision-making process that arrives at an amount and  
23 that is what I would like to know.

24 MR. FREIDIN: We will make investigations  
25 and if there is some document we can provide you which

1 sets out the factors in the way you are using them,  
2 then we will produce them.

3 THE CHAIRMAN: Well, the question, Mr.  
4 Freidin, appears to be relatively straightforward, and  
5 that is: If you are using rates that were set some  
6 time ago when the first FMAs were negotiated and you  
7 have continued to use the same rates because the actual  
8 cost of constructing is above what the payments are,  
9 then you might just make inquiries, for instance, of  
10 Mr. Armson or others as to how they set those original  
11 rates, if they took into account any factors.

12 If not, they may come back and say: We  
13 just picked a number out of the sky and put it in an  
14 agreement and stuck to it ever since.

15 MR. FREIDIN: That is one of the things I  
16 intend to do.

17 THE CHAIRMAN: It may not be in a  
18 document.

19 MS. SWENARCHUK: Exactly.

20 THE CHAIRMAN: I think what Ms.  
21 Swenarchuk wants is an explanation through one of the  
22 witnesses, or through yourself if necessary, of that  
23 information, whether it exists in a document or not.

24 MS. SWENARCHUK: Now, my question was not  
25 historical; I am asking for that decision-making

1 process or factors as they are utilized now in the FMA  
2 process. If there is an historical basis that is fine,  
3 I am interested in that too, but my focus is, of  
4 course, current practice.

5 THE CHAIRMAN: Thank you.

6 MR. MARTEL: Were they based primarily on  
7 the local roads board construction in northern Ontario  
8 that MTC paid for and still pays for in terms of the  
9 cost of miles for primary and secondary roads in  
10 unorganized townships?

11 MR. OLDFORD: You are really taxing my  
12 memory but I remember, Mr. Martel, when we were into  
13 this in 1980 we knew what our own road costs were  
14 within the Ministry and we were constructing quite a  
15 few roads, for instance, like the Gogama Unit Road, the  
16 Shining Tree Management Unit Road, and that gave us the  
17 intelligence on road construction costs at that time,  
18 and I am unaware of whether somebody consulted any  
19 other agency.

20 MS. SWENARCHUK: Q. In any event then,  
21 Mr. Hynard, getting back to our original discussion  
22 about economic factors taken into account, you agree  
23 then that, as I said, the volume of wood to be  
24 extracted by the company is presumably not a factor in  
25 setting the road lump sum rates?



1                   MR. HYNARD: A. No. You originally said  
2 value. And to summarize as quickly as I can, wood has  
3 different values at different stages in the  
4 manufacturing process, it is the value standing which  
5 is stumpage.

6                   Q. But in any event, you don't work  
7 through all that when you set the road rates; right?

8                   A. No, that's right. When we set the  
9 road rates --

10                  Q. Thank you. All right. Looking at  
11 your testimony long ago on March the 1st when you began  
12 to describe the clearcut silvicultural system you  
13 defined it as being a single harvest cut or coop which  
14 allows all or virtually all the trees removed in one  
15 operation. And you said it may be large or small  
16 depending on the forest stand.

17                  Now, what in your view is a large  
18 clearcut? What area constitutes a large clearcut, and  
19 what area constitutes a small clearcut?

20                  A. Well, that is relative. I don't have  
21 a number for you, that I can say this represents a  
22 large clearcut and this one represents a small cut. It  
23 would vary. It is a relative thing you are talking  
24 about.

25                  Q. Relative to what?

1                   A. Well, relative to whatever you have  
2 got in your mind. If for you a hundred hectare  
3 clearcut is the norm, then something larger than that  
4 would be large.

5                   Q. But I am referring to your words in  
6 your testimony and I am asking what you had in mind  
7 when you said large and small?

8                   A. Well, that is a fair question, I  
9 think.

10                  Q. Thank you, Mr. Hynard.

11                  THE CHAIRMAN: We can retire and go home  
12 now.

13                  MR. HYNARD: To me--

14                  MS. SWENARCHUK: Q. You are not  
15 suggesting my other questions were unfair?

16                  MR. HYNARD: A. --on my unit, a small  
17 clearcut -- I have little patch clearcuts as small as  
18 five hectares. That, to me, is a very small clearcut.  
19 On my unit my largest clearcut is around in acres  
20 around 700 acres. To me, that is a large clearcut.

21                  In northern Ontario, I am quite aware  
22 that clearcuts get larger than that. A large clearcut  
23 to me would be a couple of thousand hectares, that  
24 would be a large clearcut.

25                  Q. Anything less than that in the

1 northern context is a small clearcut?

2 A. I didn't say that.

3 Q. Okay. Well, let's go on. What is in  
4 your view a small clearcut in the northern boreal  
5 context?

6 A. Well, I don't work in the northern  
7 boreal context. I don't have a figure in mind.

8 THE CHAIRMAN: Is it productive, Ms.  
9 Swenarchuk, if the figure that somebody is going to use  
10 in their mind is totally subjective?

11 In other words, if one individual says  
12 large to me is 700 in this context or 2,000 in another,  
13 and another forester or another individual is going to  
14 say something else using different figures, where does  
15 it lead?

16 MS. SWENARCHUK: Well, I don't know  
17 whether everyone will have different figures, or  
18 whether there is a sort of generally accepted idea of  
19 what's large and what's small.

20 THE CHAIRMAN: Well, should that not be  
21 the question then to the panel, is there something that  
22 is generally accepted as delineating large or small?

23 MS. SWENARCHUK: Q. Well, he's put the  
24 question. Mr. Oldford? Let's at least qualify it by  
25 the forest types, Great Lakes/St. Lawrence versus

1       boreal.

2                   MR. OLDFORD: A. And Mr. Hynard is quite  
3       correct, clearcut size is not an issue in the Great  
4       Lakes/St. Lawrence Forest at all. And my experience in  
5       the boreal forest would say that clearcut size is  
6       dictated by a number of factors; probably the terrain,  
7       the type of tree species that you are operating in and  
8       age of that species and they vary so much. Like, there  
9       are lots and lots of clearcuts in the boreal that are  
10      quite small and...

11                   Q. Meaning what?

12                   A. 50, 60, 70 hectares. You can go into  
13      the Kirkland Lake District --

14                   Q. Depending on the size of the stand  
15      presumably?

16                   A. Depending on the size of the stand,  
17      the size of the operation, the history of the  
18      operation.

19                   You can go into districts like Kirkland  
20      Lake where there are a lot of small operators  
21      harvesting and the clearcuts are quite small.

22                   But in the boreal forest, in dealing with  
23      those types of species that regenerate through the  
24      clearcut harvesting system - and we are saying size of  
25      clearcut is not a particularly -- is not a problem -



1 then there would be no reason, when you were in say a  
2 mechanized operation, to be concerned about restricting  
3 the clearcut to a really small size like...

4 Q. Mr. Oldford, I don't think either the  
5 Chairman or I is asking at this moment all of the  
6 factors that go into deciding how large the cut is  
7 going to be; we are simply getting at the question of:

8 Is there a common understanding of what  
9 constitutes a large clearcut? You have now told us  
10 what you think a small clearcut is in the boreal  
11 forest. Now, what about a large one?

12 A. A large clear cut --

13 Q. Do we have to talk about medium  
14 sized?

15 A. No. A large clearcut would be one in  
16 a common cover type where there was, say, a road system  
17 heading through a lowland black spruce area and every  
18 year there are sequential cuts attached to each other.  
19 That would be a large one in my mind.

20 THE CHAIRMAN: But can you delineate it  
21 as far as size in terms of hectares?

22 MS. SWENARCHUK: Q. Numbers of hectares.

23 MR. OLDFORD: A. It would be in the two,  
24 three, 4,000 hectare range. That would be a large  
25 clearcut.

1 THE CHAIRMAN: And above.

2 MR. OLDFORD: And see, it comes back to:  
3 Where is a clearcut not a clearcut. And for someone  
4 who is talking about winter shelter for moose, it is  
5 six metres of regrowth.

6 For shelter for moose, say during the  
7 hunting season it might be two metres. For a forester  
8 it might be when the area is free to grow. For me it  
9 is when the area is revegetated and probably not free  
10 to grow, and I would like to see that as a point at  
11 which a clearcut is no longer a clearcut.

12 MS. SWENARCHUK: Q. Dr. Euler, what is  
13 your view of what constitutes a small or large clearcut  
14 in the boreal forest?

15 DR. EULER: A. I view, in my experience,  
16 clearcuts greater than 130 hectares as large and that  
17 is based on my experience with the moose guidelines and  
18 below that I would describe them as small.

19 Q. Now, Mr. Hynard, when you were  
20 talking about the clearcut system, you indicated that  
21 it is designed to further regeneration by preparing  
22 full overhead light for shade intolerant species such  
23 as poplar, jack pine, red pine.

24 Would you agree with me that the clearcut  
25 system was used for years in this country when there

1       wasn't really a question of worrying about  
2       regeneration?

3                       MR. HYNARD:  A.  Well, it has been used  
4       for years.  I don't know whether they were worried  
5       about regeneration then or not.

6                       Q.  So is that, in your view, the reason  
7       that the clearcut system originated for these species'  
8       is to further regeneration?

9                       A.  The clearcut system is an old  
10      silvicultural system when I learned about it back in  
11      forestry school and I think four of those  
12      silvicultural systems originated in Germany several  
13      hundred years ago.  That was one of the silvicultural  
14      systems.  It was determined to be the one most suited  
15      to shade intolerant species.

16                      Q.  Okay.  Now, when you were looking at  
17      photographs, and it is photograph 1.1.16 and I don't  
18      recall what page number that is on.  It may not be  
19      necessary to find the photograph.  This was an aerial  
20      view of a cut-over in which in your unit you had  
21      preserved a reserve around a lake.

22                      MR. FREIDIN:  Page 131, Mr. Chairman.

23                      MS. SWENARCHUK:  Q.  And the picture  
24      indicated what you call an area of concern on the lake  
25      and the building of a road past the cottages and I

1 think you discussed the process by which the road was  
2 placed and a reserve was left around the lake for the  
3 benefit of the cottagers.

4 MR. HYNARD: A. That's correct about the  
5 reserve, it's not correct about the road.

6 Q. Go ahead.

7 A. There is a township road runs through  
8 the middle of the cut, that road was used by the  
9 loggers. There is a cottage road that was built and is  
10 maintained by the cottagers. That road was also used  
11 by the loggers. In addition, they built other roads  
12 that they used.

13 Q. Now, you indicated that the cottagers  
14 played a role in creating the reserve. Mr. Freidin  
15 asked you that question and you indicated that the  
16 cottagers were concerned about the roads and so we cut  
17 in winter and had a performance deposit from the  
18 licensee to repair the road if necessary.

19 Do you remember testimony?

20 A. Yes, I recall that, yeah.

21 Q. Okay. Going back to the creation of  
22 the reserve now, I believe you said this occurred in  
23 1981?

24 A. I believe the cut took place in 1981,  
25 that's right.



1 Q. And this was before the area of  
2 concern planning procedure was in place?

3 A. That's true.

4 Q. And I understand that at that time in  
5 various parts of the province there was still what we  
6 call the doughnut in place regarding lakes which was  
7 leaving reserves which Mr. Martel referred to yesterday  
8 around the lakes?

9 A. There was a general practice of a  
10 doughnut generally across Ontario at that time.

11 Q. And was that true in your unit as  
12 well?

13 A. No, I don't believe we had -- we ever  
14 had a doughnut. As far as I have been on the unit 15  
15 years, we have used variable depth reserves around  
16 lakes and not fixed distances. But on my unit, we have  
17 always left a reserve around a lakes.

18 Q. And is that still the case?

19 A. That is still the case.

20 Q. On all lakes in the area?

21 A. Well, I say on all recreation lakes,  
22 lakes that are suitable for recreational purposes.

23 Q. Yours is a highly cottaged area; is  
24 it not?

25 A. Well, that's right, that's right and

1       those lakes, two and a half hour drive from Toronto,  
2       even though they might be a pretty ordinary lake, have  
3       special value because of their geographic location.

4                     Q.   They certainly have.

5                     Now, Mr. Jeffery asked you in that same  
6       context that -- when a road is -- a question to the  
7       effect that when a road is being built and maintained  
8       for cottagers on Crown land, can MNR control the use of  
9       the road, and you said yes.

10                    And then in the context of the discussion  
11       of this road conflict you indicated: We won't grant a  
12       cutting licence until the resolution of that issue has  
13       occurred.

14                    Now, my question is: Who is the 'we' in  
15       this case; are you talking about the practice on your  
16       unit?

17                    A.   I am talking about practice on my own  
18       unit and 'we' refers to me.

19                    Q.   You are not speaking --

20                    A.   Well, I don't do this granting, but I  
21       have some influence.

22                    Q.   And you are not speaking about the  
23       area of the undertaking here then?

24                    A.   No, this was in particular reference  
25       to Photo 1.1.16 I believe.

1 Q. And is that still the policy on your  
2 unit?

3 A. Oh yes, that is something I believe  
4 in pretty firmly.

5 Q. Okay.

6 A. And the reason that I do, those  
7 cottagers built that road originally, they maintain  
8 that road, that road is vulnerable to damage by logging  
9 equipment and I like to have that issue resolved before  
10 any logging commencing before any damage is done to the  
11 road.

12 Q. So I just wanted to clarify that the  
13 'we' here pertains to your unit and you are not  
14 claiming that this is a policy right across the area of  
15 the undertaking?

16 A. You are right.

17 MS. SWENARCHUK: I think this would be a  
18 convenient place to break, Mr. Chairman, it's a new  
19 subject.

20 THE CHAIRMAN: Thank you, Miss  
21 Swenarchuk. We will break until two o'clock.

22 ---Luncheon recess taken at 12:30 p.m.

23 ---Upon resuming at 2:15 p.m.

24 THE CHAIRMAN: Thank you, ladies and  
25 gentlemen. Please be seated.

1                   Ms. Swenarchuk, just before you go on we  
2                   just want to briefly deal with the matter that arose  
3                   this morning.

4                   Ladies and gentlemen, the Board has given  
5                   further consideration to the submissions made by the  
6                   various counsel this morning and has now concluded  
7                   that, in its view, it would in fact be premature to  
8                   deal with that question at this time relating to the  
9                   acceptability of the environmental assessment.

10                  The Board has long stood for the  
11                  principle that the acceptability of the assessment is  
12                  something that deserves consideration not only of the  
13                  documentation but all of the evidence adduced at the  
14                  hearing, and it certainly adheres to that principle.

15                  And, notwithstanding the peculiar nature  
16                  of the issue this morning in terms of the particular  
17                  studies requested by Ms. Swenarchuk, the Board feels  
18                  that it would be more appropriate to defer any  
19                  questions relating to the acceptability of the  
20                  assessment until the appropriate time, which would be  
21                  at the time of argument.

22                  So we will not be setting any time for  
23                  the return date for submissions on that issue.

24                  Thank you.

25                  MS. SWENARCHUK: A peculiar nature, Mr.



1 Chairman?

2 THE CHAIRMAN: Well, not peculiar but --  
3 well, let's not go any further, we'll get back into it.

4 I didn't mean peculiar nature in terms of  
5 the types of reports that you asked for, but the  
6 possible--

7 MS. SWENARCHUK: Particular.

8 THE CHAIRMAN: --ramifications that might  
9 result if you followed that line of questioning along  
10 to a possible conclusion.

11 MS. SWENARCHUK: Well, I think at the  
12 conceptual level - just one comment - you could focus  
13 not on the question of studies, per se, but the  
14 question of: Does one satisfy the Environmental  
15 Assessment Act by talking only about potential effects.

16 THE CHAIRMAN: Well, that's -- okay. And  
17 that question I think we'll probably in some way  
18 revisit at a later point in the proceedings.

19 MS. SWENARCHUK: Q. Mr. Hynard, in your  
20 testimony you referred to, I believe the photo is  
21 1.5.3, which I don't appear to have -- that was 1.5.2,  
22 and it is a strip cut in the Cochrane area at page 135.

23 And you talked about disadvantages of  
24 strip clear cuts and you indicated that they raise the  
25 cost of the harvest in road building and the necessity

1 to return twice, and then you talked about blowdown  
2 which we will refer to later.

3 Now, would you agree that normally one  
4 does not have to get involved in artificial  
5 regeneration through planting after a strip cut?

6 MR. HYNARD: A. The purpose of strip  
7 cutting is for natural regeneration, that's correct.

8 Q. So although there may be additional  
9 costs in road building and in return to the site for a  
10 second cut, there's a reduced cost in the sense that it  
11 is not necessary to use planting?

12 A. That's right. And those reduced  
13 costs would be savings in the stock itself and the  
14 planting.

15 Q. Right. Now, again talking about  
16 forest management agreement areas, has it been the  
17 practice, and is it the practice of the Ministry to  
18 give compensation to the companies for strip cutting,  
19 keeping in mind that it means that the Ministry will  
20 not then have to be paying for planting?

21 A. That the company will not have to be  
22 paid for planting?

23 Q. Right.

24 A. I am not aware of any FMA agreements  
25 in which payments are made, I believe there are none in

1       which payments are made for modified cutting.

2                   Q.   Thank you.

3                   THE CHAIRMAN:   Do you make any payments  
4       whatsoever for, say, regeneration purposes where the  
5       regeneration is actually not going to be conducted?

6                   Is it a situation where you pay after the  
7       fact when something has been done, compensate on a  
8       certain rate, or do you agree up front that you are  
9       going to make payments for certain categories whether  
10      or not they are actually carried out?

11                  MR. HYNARD:   Payment is made for  
12      silvicultural treatments and the payment is made at the  
13      time of the treatment.   The company then -- it effects  
14      the treatment and it is then responsible for any  
15      retreatment caused by failure at its own expense.

16                  MS. SWENARCHUK:   Q.   And when is failure  
17      assessed?

18                  MR. HYNARD:   A.   Five years, five years  
19      after treatment.

20                  Q.   Treatment.

21                  A.   I guess -- well, the HARO perhaps,  
22      Mr. Chairman, is a bit of an exception in that payment  
23      is made at the time of harvest although planting  
24      necessitated --

25                  Q.   Harvest of Regeneration Options,

1 HARO, H-A-R-O?

2 A. --the actual planting may not take  
3 place until the following year.

4 Q. So the majority of FMA silvicultural  
5 payments, am I correct, are based on the clearcut and  
6 plant approach?

7 A. Payments are made for site  
8 preparation, they are made for planting, they are made  
9 for stock production, when stock production is carried  
10 out by the FMA holder.

11 Payments are made for tending and there  
12 are various types of tending treatments, and so there  
13 may be different treatment rates for those different  
14 types of treatments.

15 Q. In terms of silvicultural system  
16 though, would you agree, and regeneration, the norm is  
17 clearcut and plant?

18 A. The norm for payment, or the norm for  
19 treatment?

20 Q. Both.

21 A. Well, yes, I would agree with regard  
22 to the norm for payment, I am not sure about that as a  
23 norm for treatment. I would have to check the figures  
24 and see how much natural regeneration was carried out  
25 on FMA lands and how much artificial regeneration was



1 carried out.

2 Q. Mr. Oldford, would you have any  
3 information on that?

4 MR. OLDFORD: A. Not precisely, but  
5 there is site preparation with aerial seeding, some  
6 natural seeding, and there is the modified harvest  
7 option. But the exact percentages of each, that would  
8 have to be checked and I believe that information will  
9 be brought forth in Panel 11 dealing specifically with  
10 renewal.

11 Q. Could you just tell us whether, in  
12 your view, the majority option is clearcutting and  
13 planting?

14 A. Yes, it is.

15 Q. Now, Mr. Hynard, at page 75 you  
16 listed factors considered by the forester in choosing  
17 the silvicultural system, and the fourth criterion that  
18 you listed is the past results of the available harvest  
19 option under those conditions present on the unit.

20 Now, can you tell us exactly what data a  
21 forester has about these past results and particularly  
22 in the boreal forest?

23 MR. HYNARD: A. Yes, I can. I would  
24 like to start by saying that we do not have a  
25 computerized, adaptive management model that contains

1 all the various input factors like site and treatment  
2 types and so on in a model that is constantly being  
3 updated to reflect all the findings of all the  
4 assessments that have been carried out over time.

5 In fact, I doubt that such a model exists  
6 even in diagnostic medicine; it certainly doesn't in my  
7 doctor's office.

8 That doesn't mean that past results are  
9 not important and that we don't use them in making  
10 decisions; they are important. In fact, I think the  
11 human brain is one of the best adaptive management  
12 models imaginable.

13 How do we take past results into account?  
14 There are essentially three ways. One is the  
15 formalized regeneration assessments that are carried  
16 out on areas that have been treated and they are  
17 carried out on areas selected by the forest manager,  
18 areas that he has a particular interest in knowing the  
19 results of that treatment.

20 Q. Excuse me. And does every forest  
21 manager or, say, every unit forester have a budget for  
22 doing those?

23 A. You have got to remember, I am a unit  
24 forester, I am not a provincial forester and I am not  
25 too sure of the budget of every unit across the area of

1 the undertaking.

2 My guess would be, yes, they have money  
3 to carry out surveys, that would be one survey type and  
4 they could choose to spend that money on that if they  
5 felt it was important enough.

6 Q. Mr. Greenwood, can you tell us about  
7 units in the boreal forest?

8 MR. GREENWOOD: A. I also would have  
9 some question. I don't know specifically. I would  
10 think that all unit foresters within the boreal forest  
11 would not have available funding to carry out this type  
12 of survey.

13 Whether they chose to take the money from  
14 other data collection and apply it to this survey, I  
15 think Mr. Hynard would be correct, there may be that  
16 type of option.

17 Q. Okay.

18 MR. HYNARD: A. I was trying to remind  
19 you of three points.

20 Q. Right.

21 A. I got to No. 1.

22 Q. Right.

23 A. So that's the formalized regeneration  
24 assessments.

25 The second type of -- the second way of

1 taking past results into account is by foresters and  
2 their staff visiting and revisiting over time the areas  
3 that they have treated. That's a very important  
4 element I believe in foresters learning about past  
5 results.

6 Now, how can I make that statement they  
7 do it? I am one of them, I certainly do it and I  
8 believe that other foresters, unit foresters, company  
9 foresters are of course in the same category, that they  
10 they do that; they visit their treatments, especially  
11 the ones that they consider important to know the  
12 results.

13 The third way is that we have colleagues  
14 who carry out treatments on similar site types in  
15 other -- on other units and we contact them. We  
16 contact them and we visit those areas that are of  
17 particular interest to us. If I have a site and a  
18 treatment type about which I want to know more, then I  
19 call around and I find out.

20 And, again, how can I make that  
21 statement? Well, I am one of them. You may recall,  
22 Ms. Swenarchuk, the photographs showing the Youngsteeth  
23 site preparation on that shallow sandy till in Minden--

24 Q. Mm-hmm.

25 A. --that was planted up later. That



1       wasn't just an invention on my part, I just didn't  
2       dream up that treatment and say: Well, let's give this  
3       a whirl.

4                       I called around, I located treatments in  
5       North Bay and Tweed that were on a similar site type  
6       and I did extensive visits down in the Tweed District  
7       to look at their past results on similar sites treated  
8       in that fashion for, oh, several years -- that had been  
9       treated up to six or seven years before.

10                      And I used their past results in making  
11       my prescription on my site. So I had a pretty good  
12       idea of what to expect and, in fact, I pretty much got  
13       what I expected.

14                      Q. All right. And the other factor, the  
15       fifth factor on your list is the economics of the  
16       activities to be undertaken. And I am not sure if I  
17       got to this point with you this morning.

18                      With regard to your financial analysis,  
19       exactly what do you use that for?

20                      A. I think when you referred to page 30  
21       this morning saying that I considered it important that  
22       foresters consider the factors that make investments  
23       productive, I think that's the key element here, I  
24       think it is important that they consider those factors.

25                      That model, based on net present value,

1 is one technique to actually carry out an analysis of  
2 silvicultural options. It has its flaws and it has its  
3 weaknesses - which you may wish to explore - and that's  
4 why I think it is important that foresters use it not  
5 as a conclusive answer at all, but in helping them  
6 realize the importance of those various factors and the  
7 sensitivity of the outcome to changing any of those  
8 factors.

9 Q. Are you saying that you use it to  
10 help you in selecting a silvicultural system? That's  
11 what I am trying to get it.

12 A. Oh, I see.

13 Q. Exactly what do you use it for?

14 A. You use it for selecting between  
15 silvicultural treatments and they may be treatment  
16 packages. It may be more than just the regeneration  
17 method alone, it may include the harvest, the  
18 regeneration method and the tending.

19 Let me give you an example. The  
20 choice --

21 Q. I think that's clear enough actually.  
22 And you have said that you are now engaged in training  
23 programs, training other foresters to use it, and you  
24 have said that the Ministry is now attempting to use  
25 financial analysis more.

1                   Can you tell us to what extent it is  
2                   being used now?

3                   A. Well, I would say it is being used to  
4                   a fairly limited extent. I think that foresters in  
5                   both industry and government at various levels - but it  
6                   was aimed especially at the field level - have been  
7                   exposed to the concept, at least the majority have,  
8                   they have been given practice sessions with it at the  
9                   courses, they understand how it works and they at least  
10                  understand the importance of those factors that make  
11                  investments productive.

12                  Q. And you are right, I will be coming  
13                  back to this subject again, but you are going to  
14                  testify in Panel 12 on this subject so we will leave  
15                  most of the questions for then.

16                  But just one more question now and, that  
17                  is, your rationale for using 4 per cent as the discount  
18                  rate?

19                  A. Oh, In that paper?

20                  Q. Mm-hmm.

21                  A. At the time that that was written in  
22                  1983 --

23                  Q. You also used it in the formula with  
24                  the Board?

25                  A. Yes, I just picked it out of a hat

1       there. When I selected it in 1938 for that particular  
2       paper, Larry Lambert, who was the chief forest  
3       economist at the time, looked at market interest rates  
4       and inflation rates over the, I am not sure of the  
5       exact period preceding, but he had ascertained that  
6       there was an approximate difference between the two of  
7       4 per cent -- 3 per cent it was.

8                   Q. Market interest rates and what was  
9       the other?

10                  A. Inflation. Yeah, inflation. So that  
11       if you are getting 11 per cent for your money that you  
12       have invested and the inflation rate is 8 per cent,  
13       your real gain is in fact only 3 per cent.

14                  If you are looking at interest rates and  
15       assigning values at the end of something so long as a  
16       rotation age, you have got to recognize that inflation  
17       will be occurring and that has to be somehow -- that  
18       variable has to be somehow taken into account.

19                  I took it into account by subtracting  
20       market interest rates and inflation rates and  
21       determining that the difference was approximately 3 per  
22       cent.

23                  Q. At that time?

24                  A. At that time. Now, the interest rate  
25       or the discount rate if you wish, the rate at which you



1 discount the future, it does vary. You may place a  
2 very, very high importance on the future and discount  
3 it at a lesser rate.

4 Teenagers place a really high importance  
5 on the present, I mean, they discount it at a great  
6 rate.

7 And so in selecting those interest rates,  
8 that is important to think about how important the  
9 future is to you. Those are all things to think about  
10 in setting rates.

11 Q. And you're aware there is a debate in  
12 the literature amongst economists on the current rate?

13 A. Oh, absolutely.

14 Q. Yes?

15 A. Oh, absolutely.

16 Q. Okay. Just for the assistance of the  
17 Board, I would like to bring to your attention, from  
18 the package of interrogatories that were filed  
19 yesterday, the first one on the top which is Forests  
20 for Tomorrow Question No. 3, Exhibit 491.

21 We asked in the third subsection of that,  
22 subsection (c), to:

23 "Provide a comparison of the costs  
24 involved in the use of the various  
25 silvicultural systems listed in paragraph

1 14."

2 And if we turn to the second page of the  
3 answer, subparagraph (c) again, that:

4 "With regard to the cost of harvest  
5 operations, these costs are incurred by  
6 the forest company and the Ministry keeps  
7 no records of harvest costs by  
8 silvicultural harvest system.

9 Similarly, Ministry costs for the various  
10 access, renewal and maintenance  
11 operations are not recorded by  
12 silvicultural system."

13 And the answer goes on to speak generally  
14 about comparisons of costs:

15 "The costs of providing access are  
16 greater for those silvicultural systems  
17 which call for second, third and periodic  
18 coops in any one operating block."

19 The next paragraph:

20 "Costs of logging are greater for those  
21 silvicultural systems in which the timber  
22 yield is reduced and where extra care and  
23 control is required (i.e., selection and  
24 uniform shelterwood system) than for  
25 clearcuts and strip shelterwood."

1                   Next paragraph:

2                   "The costs of renewal operations are  
3                   greater for those silvicultural systems  
4                   which rely on artificial rather than  
5                   natural regeneration methods."

6                   And then with regard to tending:

7                   "Costs are higher for those treatments  
8                   relying on manual and ground-applied  
9                   methods."

10                  Now, Mr. Hynard, if you don't have  
11                  harvest cost information, aren't you at a disadvantage  
12                  in dealing with a company which says, for example: We  
13                  don't want to engage in modified operations in this  
14                  area because they're too expensive?

15                  You are not - you meaning the Ministry -  
16                  are not in a position to evaluate what the expense is  
17                  and take that into account when assessing the company's  
18                  judgment about, for example, modified operations?

19                  A. In looking at that one item alone,  
20                  the cost of harvesting -- and I understand your  
21                  question to be: Are we in a position to evaluate a  
22                  case presented by a company that it is unable to  
23                  implement a modified cutting system because of the  
24                  extra costs?

25                  Q. Or unwilling, yes.

1                   A. Is it a case that they are unwilling  
2 or unable?

3                   Q. If you think they are two different  
4 things, let's hear about both.

5                   A. Well, I wouldn't expect a case that  
6 they were unwilling.

7                   But in the case where the company's  
8 position was it was unable to because of the extra  
9 burden of costs, no, I believe we are able to evaluate  
10 that. We have foresters within the Ministry of Natural  
11 Resources who have worked in industry in the past. I  
12 am one, Mr. Oldford's one, our organization has many.

13                   If the company was to present a case on  
14 that basis we would be, I would think, able to evaluate  
15 that case, sure. We may not be able to make the case,  
16 but I am certain we can evaluate it.

17                   Q. So notwithstanding the interrogatory  
18 response which says that the Ministry doesn't keep  
19 records of these costs by silvicultural system, you are  
20 saying that Ministry employees in fact have this  
21 information?

22                   A. No, I didn't say that. I said that  
23 if a company came forward with that case and I  
24 questioned that, I would be able to evaluate that, I  
25 would be able to muster the techniques and the data. I



1 would go out and collect it, if I had to, to evaluate  
2 that just as I would for any other decision that I had  
3 facing me.

4 I may not necessarily collect data  
5 routinely on everything - there would be such a burden  
6 of extra costs - but it doesn't mean I wouldn't be able  
7 to or be able to evaluate a case that was being made.

8 Q. Has any one of you on the panel done  
9 this with regard to evaluating such a problem?

10 Mr. Greenwood?

11 MR. GREENWOOD: A. I am unclear of your  
12 question. Have I personally gone out and collected  
13 data, as Mr. Hynard suggested, in order to make an  
14 evaluation, or have I evaluated modified cutting?

15 Q. Let's start with the second. Have  
16 you been in a position where you had to evaluate a  
17 company's claim with regard to the costs of modified  
18 cutting?

19 A. No, I have not.

20 Q. Then you haven't had any need to have  
21 the data.

22 Mr. Oldford?

23 MR. OLDFORD: A. I have been in the  
24 position where I have had to make the decision as to  
25 whether I would implement modified cutting or clearcut

1 and plant, and I was in that position when I was with  
2 the company and my choice was clearcutting and  
3 planting.

4 It is a matter of choice, and the  
5 modified cutting option, like strip cutting, is suited  
6 to a narrow range of sites.

7 Q. I am asking you, Mr. Oldford, if you  
8 have ever been in the position within the Ministry of  
9 having to evaluate from that side the costs projected  
10 by a company in a modified operation?

11 A. No, I haven't done that evaluation.

12 Q. Now --

13 MR. HYNARD: A. Don't forget to ask me,  
14 too. I haven't either, and the reason I haven't is  
15 that I have never had a company unwilling to carry out  
16 a modified cut where that was clearly the regeneration  
17 technique to be employed.

18 Now, if they did, like -- let me give you  
19 an example. The Thompsons are a licensee of mine. I  
20 know how many days they run over the course of the  
21 winter and I know how much wood they put up..

22 I know what it costs to rent skidders and  
23 hire people, I know what their bulldozer time is on  
24 their operation. I wouldn't have any trouble  
25 evaluating.

1 Q. Well, thanks for your help, Mr.  
2 Hynard, but you have already told us that you can get  
3 the information and I am satisfied with that, and I'm  
4 asking the other members of the panel.

5 And, Mr. Greenwood, you have never had  
6 occasion to need it. Would the information be  
7 available to you, would you be able to assess the costs  
8 of -- a company's harvest costs?

9 MR. GREENWOOD: A. Yes, I think I assess  
10 it as well.

11 Q. And how would you do that?

12 A. If I didn't have the quantitative  
13 data, I certainly understand some of the relationships  
14 at play and I may be able to do it on the basis of  
15 sensitivity to those relationships.

16 If I had to get the data, I could do it  
17 the same way Mr. Hynard has which is contact people who  
18 have worked for industry or approach the directly and  
19 ask them for their costs.

20 And, also as Mr. Hynard, the reason I  
21 didn't collect it was because the company didn't object  
22 to the modified cuts that took place on my unit.

23 Q. Okay. So notwithstanding the answer  
24 to the interrogatory, presumably then this information  
25 is available within the Ministry, or could be gathered

1 if necessary?

2 A. I would say could be gathered if  
3 necessary.

4 MR. HYNARD: A. Well, let me just have a  
5 look at the original question again.

6 Q. I am referring to the second page  
7 of -- it is the second paragraph of the Ministry's  
8 answer to subsection (c) of the interrogatory. It is  
9 at the top of the second page.

10 A. Your question was:

11 "Provide a comparison of the costs  
12 involved in the use of each silvicultural  
13 system."

14 I certainly wouldn't be able to do that.  
15 I mean, I could develop a case study, but that would be  
16 about it, and that's in fact when we are evaluating a  
17 case, is a case study. That would be relatively easy  
18 to do.

19 A comparison of the costs involved in the  
20 use of each silvicultural system in the area of the  
21 undertaking, we are unable to and for the reasons we've  
22 explained to you.

23 Q. Mr. Hynard. Mr. Hynard, I am now  
24 satisfied to discuss the individual case with you, all  
25 right.



1                   Looking at that answer, I am simply  
2           saying: You are satisfied that given that problem on  
3           your unit you could get the data; right?

4                   A. That's right.

5                   Q. Now, Mr. Hynard, Mr. Freidin asked  
6           you some questions about what he called a rulebook for  
7           silvicultural prescriptions. Now, what do you  
8           understand by the term rulebook?

9                   A. Well, if my memory serves me  
10          correctly, when I replied to Mr. Freidin I said that I  
11          understood it to be a set of prescriptions that would  
12          be implemented as written.

13                   Do you have my words there?

14                   THE CHAIRMAN: Wasn't the term used  
15          cookbook or something, or was that a different...

16                   MS. SWENARCHUK: This was rulebook.

17                   THE CHAIRMAN: This was rulebook.

18                   MS. SWENARCHUK: Q. I am not sure that  
19          you explained what you meant by it, and that is partly  
20          why I am asking you now.

21                   MR. HYNARD: A. Do you have my words  
22          there?

23                   MR. FREIDIN: I did ask him --

24                   MR. HYNARD: It would be easier if I had  
25          my words in front of me.

1 MR. FREIDIN: I did ask him specifically  
2 what it meant to him, and he did answer it. Have you  
3 got the reference?

4 MS. SWENARCHUK: I have the date, I don't  
5 have the transcript volume.

6 MR. HYNARD: 76. Well, if we are going  
7 to look for the page number, Mr. Chairman, it's going  
8 to take some time.

9 THE CHAIRMAN: Well, just one moment. I  
10 think Ms Blastorah probably has the book.

11 MS. SWENARCHUK: It was March 2nd in any  
12 event.

13 MR. FREIDIN: Volume 77.

14 MR. HYNARD: Oh, 77 then.

15 MS. SWENARCHUK: Q. Could I see that?

16 MR. HYNARD: A. No, you're wrong -- I'm  
17 wrong again. It must be 78. Sorry, Catherine, 78.

18 MS. SWENARCHUK: All right.

19 Q. It says at page 13095 -- Mr. Freidin.  
20 asked you:

21 "Another matter I would like you to  
22 comment on, Mr. Hynard, is about what I  
23 have described here as a rulebook  
24 for silvicultural prescriptions.

25 Now, when I use that term rulebook for

1                   silvicultural prescriptions, what does  
2                   that mean to you?"

3       And the answer:

4                   "Well, a rulebook in that case  
5                   would be a set of written silvicultural  
6                   Prescriptions which would be  
7                   implemented as written."

8                   And then you were asked if you believed  
9       such a rulebook is a good idea. And I think you  
10      said -- you used the word ludicrous.

11                   MR. HYNARD: A. What I recall saying:  
12      No, it wouldn't be a good idea, and I believe I gave  
13      three reasons as to why it wouldn't be a good idea.

14                   Q. "Well, I'm sure that to follow a  
15                   rulebook would result in absolutely  
16                   ludicrous happenings from time to time  
17                   and I think the overall would be less  
18                   than you could have with a thoughtful,  
19                   caring forester managing the unit."

20                   A. Yes.

21                   Q. Okay.

22                   MR. FREIDIN: He also indicated that  
23      there were risks of having a rulebook.

24                   If she wants to put the evidence in, then  
25      perhaps she can put -- all of the evidence in relation

1 to that matter should be given to the witness.

2 MS. SWENARCHUK: I was going to ask him  
3 some specific questions about the contents of the  
4 rulebook, and I think that might just take care of it,  
5 Mr. Freidin. Now, just let me put the question.

6 Q. Would you be distinguishing this  
7 concept of rulebook then from something like the  
8 silvicultural guides?

9 MR. HYNARD: A. Yes, I would.

10 Q. And what about the Fish Habitat  
11 Guidelines which have minimum information requirements  
12 and fairly specific prescriptions?

13 A. I don't want to categorize them as a  
14 rulebook, but they are less flexible.

15 Q. That's because you don't like the  
16 word rulebook; right. But isn't that the kind of  
17 prescription that could be in a rulebook?

18 A. I'm not trying to evade your  
19 question, I'm trying to formulate the answer in my  
20 mind.

21 I guess I said at that time that what I  
22 meant by a rulebook, or what I understood a rulebook to  
23 be was a set of silvicultural prescriptions that would  
24 be implemented as written.

25 Q. Meaning with no discretion whatever?



1 A. That's right.

2 Q. All right.

3 A. And certainly there is discretion in  
4 the Fish Habitat Guidelines. It states right in there  
5 that deviation is permissible where it can be  
6 demonstrated that fish habitat is being protected.

7 Q. Would you consider it ludicrous to  
8 require minimum information reporting about  
9 silvicultural prescriptions?

10 A. What I meant by the word ludicrous  
11 was that if you followed a written prescription by  
12 rote, to use Dr. Euler's term, then the results would  
13 be ludicrous at times, you would do the wrong thing.  
14 That is what I meant by the term ludicrous, and if  
15 someone would come forward and say: Why did you do  
16 that?

17 Q. Fair enough.

18 A. Because it is in the rulebook. That  
19 would be ludicrous.

20 Q. Fair enough. But let's again use the  
21 Fish Habitat Guidelines as a possible model and the  
22 minimum information requirements in them.

23 You agree that, using the term loosely, a  
24 rulebook which might require minimum information  
25 reporting for silvicultural prescriptions is not

1       ludicrous and could be quite reasonable?

2                   A. Well, I would certainly agree that if  
3       you are making silvicultural prescriptions that you  
4       must have some knowledge of that forest; the amount of  
5       knowledge that you would need would depend on the  
6       circumstances.

7                   Q. And it wouldn't be ludicrous for the  
8       public to decide that it would like to have some  
9       information in the plan as to the rationale for your  
10      decision-making?

11                  A. If you are talking about minimum  
12      requirements of information, let's go back to the  
13      Youngsteeth site preparation site that was on that  
14      southern site tour.

15                  I can remember crawling through that  
16      cut-over with a soil auger drilling holes every -- here  
17      and there, whenever the notion struck me, to get a feel  
18      for how much dirt was there, how much of the net area  
19      would we cover with that treatment type, would we be  
20      able to plant trees.

21                  Now, I did it there because I was really  
22      concerned about that. It's a pretty rocky site, and I  
23      wanted to know before I began treatment.

24                  It would be ludicrous for me to take a  
25      soil auger and go boring holes everywhere on other

1 sites.

2 But that was information I needed to know  
3 on that site. I hadn't done that treatment type before  
4 on that site type and I wanted more information and I  
5 collected it.

6 THE CHAIRMAN: Is that the basis of your  
7 question though, Ms. Swenarchuk? Are you asking the  
8 witness whether or not he would agree that there should  
9 be in the plan the basis upon which the decision was  
10 made and, in terms of that information in the plan.

11 So if it was your Youngsteeth site, for  
12 that particular plan it would say that you took bore  
13 hole auger -- or augered bore holes every so often.

14 MR. HYNARD: Yes.

15 THE CHAIRMAN: For another site it  
16 wouldn't contain that information because you didn't  
17 think it necessary to make a silvicultural decision on  
18 another site. Is that what you are getting at?

19 MS. SWENARCHUK: Exactly.

20 MR. HYNARD: And my evidence to you, Mr.  
21 Chairman, that day when you asked me that, when you put  
22 that question to me: Is that your evidence?

23 And I said, yes, that I did not agree  
24 with that position for three reasons. One was that it  
25 was incredibly onerous, to document a rationale for all

1 of our silvicultural decisions was a very onerous task.

2 MS. SWENARCHUK: Q. Doesn't that depend  
3 on how --

4 MR. HYNARD: A. Secondly, it was  
5 unnecessary. It is unnecessary I believe for us to do  
6 that in all of those circumstances.

7 And, thirdly, it just didn't recognize  
8 that the professionals making professional decisions.  
9 I mean, if we were to be taking -- if we were to go out  
10 to all those sites and document the rationale for the  
11 silvicultural decision, well Mr. Armson said, we would  
12 do a lot of documenting and not very many decisions.  
13 And I agree with that.

14 Q. Doesn't that depend, Mr. Hynard, on  
15 the detail with which the reporting is required? It  
16 could be designed to be very onerous or it could be not  
17 very onerous at all. Surely you are taking the  
18 extreme.

19 A. I am. If you wanted to have -- if  
20 you wanted me to prove to you that every decision I was  
21 making was correct, it would be very onerous.

22 If, on the other hand, you said: Well,  
23 just give me a hint or a clue as to why you are doing  
24 this, it may not be very useful.

25 Q. But, on the other hand, it may not be



1 very onerous.

2 A. Maybe onerous and useful are sort of  
3 together here on this.

4 Q. Would you answer my question, please.  
5 Would it be onerous or not--

6 A. Well --

7 Q. --to give a brief description of  
8 factors leading to a silvicultural decision?

9 A. Ms. Swenarchuk, the reason I am so  
10 hesitant here is that I have been sucked in in the past  
11 in too. They've told me that coming to these hearings  
12 wasn't going to be very onerous.

13 Q. Well, I don't take any responsibility  
14 for that, Mr. Hynard.

15 THE CHAIRMAN: And we won't ask the  
16 question as to whether your appearance is useful.

17 MS. SWENARCHUK: Q. All right. Let me  
18 put the question another way.

19 You may think, from your perspective as a  
20 forester, that you take these factors into account and  
21 you make a decision and you choose a silvicultural  
22 system. To the extent that that decision-making  
23 process is not recorded, it is not accessible to the  
24 public who, after all, ultimately own the lands.

25 Now, I'm asking you: Isn't there a

1 middle ground here between your capacity as a forester  
2 to do your job reasonably and your obligation as a  
3 public servant to - let me finish my question,-  
4 please - to inform the public which has a legitimate  
5 concern about the use of its forest lands?

6 MR. HYNARD: A. That was a long sentence  
7 and I really did fail to grasp the question that was  
8 contained within it. I'd be rather careful in  
9 answering that.

10 Q. So I take it -- all right, fine.  
11 Your position then -- am I correct in saying that your  
12 position is that a requirement to document  
13 silvicultural systems is too onerous and it appears to  
14 me that you are saying that it would not be possible to  
15 devise a system for even reasonable reporting so that  
16 the public would have access to this information  
17 without putting on you responsibilities that you  
18 consider too onerous?

19 A. If you can show me your proposal on  
20 the documentation, I will give you the opinion on how  
21 onerous I believe it would be.

22 Q. Well, that is an issue that concerned  
23 me with your testimony, Mr. Hynard, is that: In the  
24 absence of a detailed description, even of what kind of  
25 reporting you would be looking for, you concluded

1 immediately that it would be onerous and ludicrous, and  
2 I'm simply putting to you that it might be possible to  
3 devise a system for that which would not be ludicrous  
4 and, to use today's term, onerous.

5 That's possible; is it not?

6 A. If you show me - and I can only  
7 repeat - if you show me your proposal, I will evaluate  
8 it on its onerous nature -- as to its onerous nature.

9 Q. Now, we also talked - I think I'm  
10 quoting you this morning or this afternoon, rather -  
11 you have said that documenting silvicultural rationale  
12 would not be necessary; is that not right?

13 A. I believe it is not necessary.

14 Q. Would you concede that it could be  
15 necessary depending on whose needs you are looking at;  
16 in other words, from the point of view of the public,  
17 it could be helpful to have that documentation?

18 A. No, I can't say that it necessarily  
19 would. I would agree that there are people who are  
20 interested from time to time on why we do the things we  
21 do. And I'm thinking particularly of landowners, when  
22 we carry out forestry operations on their lands, they  
23 have a fairly high interest and that happens on Crown  
24 lands too.

25 And, occasionally, when I deal with other

1 users -- and they will put the question to me: Why are  
2 you doing this? Why are you doing it in this way? And  
3 I always take the time to explain to them exactly why.  
4 That is quite different than a requirement to document  
5 the rationale for all silvicultural decisions.

6 I don't deny that people are interested  
7 and that -- and it is good thinking to tell them why we  
8 are doing what we are doing and I try to do that, but I  
9 do not want to be saddled with more bureaucracy on  
10 documentation of rationale and reporting and more  
11 workload is not going to bring me another assistant to  
12 carry the paper around.

13 I would like to see my efforts directed  
14 at forest management, not documents.

15 Q. How do you respond then to the  
16 concerns of groups like my clients who consider that  
17 they suffer from a lack of information about precisely  
18 this subject, the rationale -- the decision-making  
19 process and the rationale for silvicultural decisions  
20 in various units of this province and, secondly, who  
21 are are not satisfied when they make inquiries,  
22 including at times going and looking at the plans?

23 Now, how would you satisfy that need?

24 A. How many requests have they made? I  
25 mean, if I were giving advice on it, I would say: Drop



1 in and see your local forester and talk to him about  
2 it, he's --

3 Q. Well, frankly, conservation groups in  
4 this province deal with many, many forested areas.  
5 That in itself could be a difficult task.

6 In any event, sincere efforts to acquire  
7 the information have been made and the information has  
8 not been forthcoming. Now, how would you propose to  
9 satisfy that need?

10 A. Well, I'm not familiar with the cases  
11 your describing, I'm really not in a position to reply  
12 to that.

13 Q. Fine, thank you.

14 MR. FREIDIN: Mr. Chairman, if I might, I  
15 just want to comment again to that line of questioning.

16 Ms. Swenarchuk in her questioning had  
17 suggested the witness, that he had indicated that  
18 reporting rationale was ludicrous and that he had  
19 suggested other things were ludicrous as well.

20 I just want to point out that my reading  
21 of the transcript indicates that the only comment this  
22 witness made about anything being ludicrous was about  
23 the rulebook could result in absolutely ludicrous  
24 happenings from time to time, being the ludicrous  
25 example applying to the rulebook.

1                   If Ms. Swenarchuk is going to  
2 cross-examine the witness and suggest that he said  
3 certain things, I would ask that she take more care to  
4 be accurate.

5                   MS. SWENARCHUK: Well, I think if you  
6 read on in the transcript you will find the terms  
7 impractical, cumbersome and unnecessary with regard to  
8 preparing rationale for silvicultural decisions, Mr.  
9 Freidin.

10                  MR. FREIDIN: Exactly. That may be  
11 ludicrous in your interpretation, but the witness --  
12 you put the word to him, you said what he said. Please  
13 attempt to be more accurate.

14                  MS. SWENARCHUK: And then we went on to  
15 discuss comments he made today with regard to what was  
16 necessary and unnecessary, Mr. Freidin.

17                  THE CHAIRMAN: Well, ladies and  
18 gentlemen, I think the Board has the gist of the  
19 evidence.

20                  MS. SWENARCHUK: Q. Mr. Hynard, you  
21 recognize a need to account to the public for your  
22 decisions; do you not?

23                  MR. HYNARD: A. Oh yes, in a broad and  
24 general sense, yes. We are a public agency, we are  
25 funded by the taxpayers of Ontario, they have a right

1 to know what we are doing, and I believe they have a  
2 right to know why we are doing it, sure.

3 Q. And how do you, in your estimation,  
4 fulfill that need of accountability now?

5 A. Well, right now on my unit I do that  
6 by, whenever I deal with interest groups I deal openly  
7 and frankly with them. That, in my experience, has  
8 satisfied them, it has worked well, they got exactly  
9 the information they needed when they needed it and  
10 they could understand it. If they didn't understand  
11 it, I could rephrase it or put it to them in another  
12 way.

13 That is quite different than reading  
14 management plans that can be both...

15 Q. So, again, I take it your solution to  
16 this problem then is face-to-face discussion?

17 A. Yes, I like to do it that way.

18 Q. Fair enough.

19 Mr. Oldford, I would like to ask you some  
20 questions about harvest regeneration operations, HARO.

21 Now, you referred in your evidence to the  
22 existence of a HARO, as you call it, for one area. Is  
23 that for the Clay Belt. Does it not pertain to a  
24 specific part of the Clay Belt?

25 MR. OLDFORD: A. Mainly to the Clay Belt

1 and I believe also in my evidence I mentioned the fact  
2 that it would be expounded upon I guess in some detail  
3 in evidence package 11. It is a renewal operation and  
4 it will be covered there.

5 Q. Okay. Can you just tell me this:  
6 Do specific HARO plans or proposal exists for various  
7 management units, or is it an approach that is simply  
8 taken into account when a timber management plan is  
9 being prepared?

10 A. There are in the FMAs those  
11 companies - and I can think of two companies, Abitibi  
12 Price on the Iroquois Falls licence, and Spruce Falls  
13 Pulp and Power on the Spruce Falls FMA - they both have  
14 the HARO operation in their -- built in to their FMA  
15 and the meaning of that HARO option is well defined  
16 amongst the Ministry and the company foresters.

17 Q. So we can read that by looking at  
18 those FMAs?

19 A. Yes.

20 Q. Okay.

21 A. As a matter of fact you can go even  
22 further. The HARO option, there was a pretty  
23 comprehensive booklet prepared on that along with the  
24 film to guide foresters on the use of that option and  
25 that is available.



1 Q. Yes. I'm more concerned with its  
2 prevalence, but if you have said it is going to be  
3 addressed in Panel 11, we can leave that issue until  
4 then.

5 MR. GREENWOOD: A. Ms. Swenarchuk, just  
6 on a point of clarification. HARO is an accounting  
7 system, it is not a regeneration system. It is an  
8 accounting system which is currently applied through  
9 the FMA process but, in actual fact, as a renewal  
10 system, it includes a blend of natural and artificial  
11 treatment but the name HARO applies to an accounting  
12 system.

13 Q. Thank you. Now, Mr. Oldford, you  
14 testified with regard to the use of high flotation  
15 tires--

16 MR. OLDFORD: A. Yes.

17 Q. --for site protection. Can you give  
18 us an idea of how prevalent is the use of these tires?  
19 First of all, can they be used on equipment other than  
20 skidders?

21 A. Yes, they can be used, they can be used  
22 on forwarders.

23 Q. And how prevalent is their use?

24 A. On those sites where their use is  
25 required, they are used and quite prevalent in the Clay

1 Belt area.

2 Q. The Ministry of the Environment  
3 Question No. 7 had to do with the types of equipment on  
4 which the high flotation tires could be used.

5 MS. BLASTORAH: Is that one that has been  
6 filed?

7 MS. SWENARCHUK: I thought it was part of  
8 my package, Mr. Chairman. I doubt it. I think the  
9 most efficient thing would be to make copies over the  
10 break. Do you want to take a break now to do that?

11 THE CHAIRMAN: Well, it is a little bit  
12 early. Would it be possible for you to move on and we  
13 will break at 3:30?

14 MS. SWENARCHUK: Q. We will come back to  
15 that question then, Mr. Oldford. I understand also  
16 from your evidence that full-tree harvesting is now  
17 being used on the full range of sites?

18 MR. OLDFORD: A. Yes, that is correct.

19 Q. Now, are there any guidelines or  
20 instructions -- or let's just use the word guidelines,  
21 issued by the Ministry to the industry with respect to  
22 the types of sites on which full-tree harvesting can be  
23 carried out?

24 A. No.

25 Q. And at page 167 of the Volume I,

1 Panel 10, page 167, you indicated that:

2 "A great deal of emphasis is placed on  
3 protection of the logging site and  
4 selecting or modifying logging methods.  
5 The reasons are two-fold: To minimize  
6 site damage and to ensure that follow-up  
7 renewal activities will be effective and  
8 economical."

9 And then you said:

10 "This is especially the case on FMAs."

11 And then you said:

12 "Logging methods are selected or altered  
13 to ensure that the harvest area is  
14 minimally impacted and additional costs  
15 incurred are accepted as a cost of doing  
16 business in an environmentally sound  
17 manner."

18 Now, are these plans for environmental  
19 protection documented in the timber management plans?

20 A. No.

21 Q. And are you referring here to such  
22 methods as harvesting hardwoods in the leafless state,  
23 doing full-tree harvesting in winter when twigs and  
24 needles are brittle and more apt to remain on the site?

25 A. That could be an example. Another

1 example could be if one had to operate on a site that  
2 was wet, operations would be conducted using either  
3 high flotation equipment, which might be skidders with  
4 wide tires, it could be feller-bunchers with extra wide  
5 tracks, but good concern for the environment of the  
6 site.

7 THE CHAIRMAN: Would these not be  
8 documented, Mr. Oldford, in the operational plans?

9 MR. OLDFORD: These would be -- the  
10 approach that the logging was going to take would be  
11 well known by the Ministry foresters in the district  
12 and by the company forester.

13 In some groundrules, the logging method  
14 is listed. I couldn't speak to all of them, I haven't  
15 reviewed all of them.

16 MS. SWENARCHUK: Q. So it is at times  
17 listed in the --

18 MR. OLDFORD: A. The logging method is  
19 sometimes mentioned in the groundrules.

20 Q. And I believe in discussing modified  
21 or modifying operations with regard to emphasis on  
22 protection of the site, you indicated that modifying  
23 operations means modifying equipment.

24 And my question is: Does it also ever  
25 include modifying cutting?



1                   A. Modifying could be the modifying of  
2                   the equipment, it could be changing the season of the  
3                   year, it could be modifying the application of the  
4                   equipment to the site.

5                   There is quite a range of flexibility  
6                   there. That is probably limited only by the ingenuity  
7                   of the users.

8                   Q. So it can include as well modified  
9                   cutting?

10                  A. It can include that, yes.

11                  Q. And is that in your view prevalent?

12                  A. There is modified cutting carried out  
13                  in Ontario, one has a choice: To use modified cutting,  
14                  or to modify the operation and, say, time of year, or  
15                  in the method of application.

16                  Q. And how prevalent in your estimate is  
17                  the modified cutting option?

18                  A. Could I ask which modified cutting  
19                  option you are referring to?

20                  Q. Let's specify that. A strip cutting  
21                  to start with.

22                  A. In the low percentages, and I would  
23                  be -- for the benefit of the Board and yourself, be  
24                  saying probably in the 3 to 5 per cent range.

25                  Q. And what other modified cuts can you

1 think of that are practised?

2 A. The other modified cuts are the ones  
3 that I mentioned, modifying the time of operation,  
4 modifying the equipment on the site, there is quite a  
5 bit of flexibility.

6 Q. But that would still be basically  
7 standard-sized clearcutting?

8 A. Yes.

9 Q. Now, Dr. Allin, I believe you  
10 referred earlier in your testimony to similarities in  
11 kind between timber management and natural disturbance  
12 with respect to aquatic effects?

13 DR. ALLIN: A. Yes.

14 Q. And would I be correct in saying that  
15 the natural disturbance you had in mind there  
16 particularly was fire?

17 A. I think I was referring most  
18 frequently to fire, yes.

19 Q. Are there any differences in your  
20 view between the environmental effects of timber  
21 management and fire on the aquatic environment?

22 A. Yes, there may well be some  
23 differences, but it is a little hard to generalize  
24 because it depends what you're comparing both in the  
25 nature of the harvest that you are referring to,

1       whether it is, for example, a selection cut as opposed  
2       to a clearcut and, on the other side, the nature of the  
3       fire that you are speaking of, whether it is a very hot  
4       and intense fire or whether it is a more moderate fire.

5                   Q.   Well, let me give you free reign and  
6       tell me how you would compare the effects of  
7       clearcutting with the effects of fire as you understand  
8       that term on the aquatic environment?

9                   A.   Well, I think I referred in my  
10      evidence to a fire that was studied in the experimental  
11      lakes area in northwestern Ontario which was  
12      characterized as a very hot fire and I compared that  
13      with a study of clearcutting in the same general area.

14                   In both cases there was some measurements  
15      made of certain parameters, particularly water yield  
16      and nutrient leaching, and the results with respect to  
17      nutrients were fairly similar in that case, and I'm  
18      referring specifically to phosphorus concentrations in  
19      the streams draining those particular study areas.  So  
20      in that particular case the nutrient results were, as I  
21      would describe them, fairly similar.

22                   In the case of water yield, which was the  
23      other major effect studied, the water yield remained --  
24      appeared to remain elevated somewhat longer with the  
25      clearcutting than it did with the fire.

1                   It is a little difficult to compare them  
2           though because the studies were not continued long  
3           enough to know when the effects subsided entirely, in  
4           other words, water yield returned to pre-disturbance  
5           levels.

6                   So that's the best example that I could  
7           find of a comparison between fire and timber harvest,  
8           because the studies were carried out in the same  
9           general area and basically the same parameters were  
10          studied.

11                   There are a number of other papers which  
12          document the effects of both harvest and fire, but it  
13          is pretty difficult to compare them because they took  
14          place in different areas or different parameters were  
15          studied.

16                   Q.   Fine.  I believe, Dr. Allin, that you  
17          were involved in the ESSA exercise in effects  
18          monitoring for resource protection guidelines in  
19          Ontario; were you not?

20                   A.   Yes, I was.

21                   Q.   Do you have that study in front of  
22          you?

23                   A.   Yes.

24                   MR. FREIDIN:  Mr. Chairman, it might be  
25          an appropriate time for a break.  I don't have a copy



1 of that exhibit.

2 THE CHAIRMAN: Okay. We will take 20  
3 minutes at this time. You can deal with that other  
4 interrogatory at the same time.

5 Thank you.

6 ---Recess taken at 3:20 p.m.

7 ---Upon resuming at 3:45 p.m.

8 THE CHAIRMAN: Thank you. Be seated,  
9 please.

10 MS. SWENARCHUK: I think I will go on and  
11 come back to the interrogatory another time.

12 THE CHAIRMAN: So we need the ESSA report  
13 in front of us.

14 MS. SWENARCHUK: Right. Mr. Mander was  
15 getting it, or had got it.

16 THE CHAIRMAN: Thank you.

17 MS. SWENARCHUK: Q. Dr. Allin, Mr.  
18 Freidin asked you about your view of the effectiveness  
19 of the fisheries guidelines and I believe you said --  
20 you indicated that you thought they will be effective.

21 Can you expand on that; effective for the  
22 protection of fish habitat?

23 DR. ALLIN: A. Yes.

24 Q. Is that what you meant?

25 A. Yes, that's correct.

1 Q. And what about for the protection of  
2 fish populations?

3 A. Well, certainly to the extent that  
4 the guidelines are effective in addressing habitat  
5 effects, that would mean that habitat obviously will  
6 not be compromised and, therefore, fish populations  
7 will not be affected by habitat changes.

8 Now, that does not address the effects of  
9 access in relation to fishing pressure.

10 Q. Okay. Can we look at the ESSA  
11 Report. The first section of it, which is the  
12 executive summary - unfortunately it does not have page  
13 numbers - but I'm looking at the sixth page and the  
14 heading General Strategy for Monitoring in the  
15 executive summary.

16 A. Yes, I have that.

17 Q. If we look at the first paragraph we  
18 see:

19 "The hypotheses of effect contain three  
20 parts: The timber management action, the  
21 change in the habitat caused by the  
22 timber management action, and a change in  
23 population numbers. The distinction  
24 between research and monitoring at the  
25 habitat as opposed to the population

1 level is crucial as it underlines a  
2 fundamental issue concerning the  
3 justification for resource protection  
4 guidelines. The guidelines are intended  
5 to provide for the protection of habitat  
6 from timber management activity. To say  
7 that the guidelines are designed to  
8 to protect the resource value/population  
9 from timber management activities implies  
10 that the relationship between habitat and  
11 levels of difference resource values is  
12 known. Workshop discussions indicated,  
13 however, that this relationshi is not  
14 well understood."

15 And at the top of the next page they have  
16 indicated:

17 "Where possible, effects monitoring  
18 studies must be conducted at both the  
19 habitat and population levels to maximize  
20 the improvement and understanding of  
21 timber management effects on resource  
22 values and the effectiveness of a  
23 resource protection guidelines."

24 I take it you agree with those  
25 statements; do you?

1 A. Yes, I do.

2 Q. So aren't we left with a problem then  
3 in assessing whether the fisheries guidelines, if  
4 implemented, will in fact protect fish populations?

5 A. I don't think so, leaving aside the  
6 effect of increased access and resulting fishing  
7 pressure.

8 Q. So is it your position then that the  
9 habitat/population relationship is well understood with  
10 regard to fish and that protecting the habitat  
11 necessarily protects the population levels, which seems  
12 frankly to be contrary to what ESSA was reporting here.

13 A. Yes, that would be contradictory.  
14 No, that's not what I was saying. The relationship  
15 between habitat quality and quantity and fish  
16 population numbers is not very well defined and that is  
17 indicated in the ESSA report.

18 The importance of that is that we are  
19 uncertain as to the amount of habitat that could be  
20 lost due to any particular cause, but let's say a  
21 timber management practice, and the effect that that  
22 would have on a fish population.

23 The conservative assumption that we make  
24 is that a loss in fish habitat will result in a  
25 corresponding loss in fish population. That may not



1 necessarily be true, there is some evidence to suggest  
2 that it wouldn't be true.

3 But, as I see it, the importance here is  
4 that if you protect fish habitat through the use of the  
5 guidelines, then obviously in terms of the fish  
6 populations themselves, there is not a habitat concern.  
7 There may be other concerns, but not a habitat concern.

8 Q. So are you saying then that the  
9 fisheries -- the Fish Habitat Guidelines are designed  
10 on the assumption that there is a direct relationship  
11 between habitat protection and population protection?

12 A. That's right.

13 Q. And designed to, therefore, prevent  
14 population decline through habitat decline?

15 A. That's right.

16 Q. Okay. If we can look at the next  
17 page then on fish effects monitoring:

18 "The proposal is that the strategy for  
19 fish effects monitoring involves  
20 selecting a number of relatively small  
21 catchments to be subjected to a variety  
22 of timber harvest manipulations ranging  
23 from no logging at all to maximum timber  
24 removal without applying the Fish Habitat  
25 Guidelines. The streams in these

1 catchments would be monitored for changes  
2 in habitat parameters. Population  
3 effects should only be assessed on a  
4 subset of the study sites."

5 Now, why is that?

6 A. Frankly, I'm not sure why it says on  
7 only a subset. I would suspect that part of the  
8 rationale for that was the considerably increased costs  
9 of going as far as measuring population effects.

10 This is a much more involved and  
11 complicated study than simply measuring habitat  
12 effects, ideally you would look at both population  
13 effects and habitat effects in every case.

14 Q. Are you saying then that in your  
15 opinion the proposal to monitor only subset populations  
16 is sufficient, or should the monitoring program in fact  
17 have a wider population level monitoring component?

18 A. Oh, I think it should have a  
19 population monitoring component, yes.

20 Q. Wider than this, or will this be  
21 sufficient in your opinion?

22 A. I can't give you a definitive answer  
23 at the moment. I would have to see the detailed study  
24 design.

25 Q. All right. Has a detailed study

1 design been developed yet?

2 A. No, it has not.

3 Q. I see. And do you have an idea when  
4 it will be?

5 A. I believe the intent is to develop  
6 that in the current fiscal year.

7 Q. So you should and we should be able  
8 to see that some time in the next year of this mammoth  
9 undertaking?

10 A. I hope so.

11 THE CHAIRMAN: Would we be seeing this  
12 kind of proposals before the end of Ministry's case.  
13 It's not likely; is it?

14 MR. FREIDIN: I can't add -- I don't  
15 know. It is being worked on. I don't know what stage  
16 stage it is at or when it would be completed.

17 MS. SWENARCHUK: Not in Panel 15, Mr.  
18 Freidin?

19 MR. FREIDIN: I really don't know. I  
20 mean, if it's going to be -- if it will be available  
21 and completed, we will present that as part of the  
22 evidence in Panel 16 I would think, which is going to  
23 deal with effectiveness monitoring which arises out of  
24 these workshops.

25 THE CHAIRMAN: Well, you can appreciate,

1 Mr. Freidin, that if something - if I might suggest as  
2 important as monitoring - is being worked on and things  
3 are developed even after your case is finished but  
4 before the end of the hearing, that certainly might be  
5 a relevant area for the Board to re-explore at the time  
6 it comes forward.

7 MR. FREIDIN: I accept your proposition,  
8 Mr. Chairman, that the EA is an evolving thing and it's  
9 not the Ministry's intention to not to present that  
10 sort of information.

11 THE CHAIRMAN: Okay.

12 MS. SWENARCHUK: Q. Dr. Allin, if you  
13 could turn to page 215 of the ESSA report, please.

14 DR. ALLIN: A. Sorry, 215?

15 Q. Two one five. We are looking at the  
16 third paragraph, the sixth line:

17 "Current policies and guidelines don't  
18 exist for the remaining four timber  
19 management effects: Effects of timber  
20 management on fish by a changed stream  
21 regimes, changing lake pH,  
22 phosphorus effects on fish growth and  
23 phosphorus effects on fish survival. In  
24 addition, much of the evidence that was  
25 used to document the significance of



1 effects and the adequacy of the  
2 guidelines came from outside Ontario.  
3 These findings clearly point to the need  
4 to experimentally resolve these major  
5 Uncertainties in Ontario."

6 Do you know of, at this time, any  
7 proposed research or any strategy within the Ministry  
8 that will attempt to resolve or study the four effects  
9 for which current policies and guidelines do not exist?

10 DR. ALLIN: A. My understanding from  
11 evidence that is contained in the witness statement for  
12 Panel 16 is that all of the effects that are listed  
13 here is uncertain would be addressed in the effects  
14 monitoring program.

15 Q. I see, thank you.

16 MR. FREIDIN: Mr. Chairman, when that  
17 quote was read, I think Ms. Swenarchuk referred to the  
18 effects of timber management on fish and the quote is:  
19 The effects of timber harvest.

20 It specifically refers to harvest, not  
21 timber management in general.

22 MS. SWENARCHUK: Excuse me.

23 MR. FREIDIN: The third line that she  
24 read.

25 MS. SWENARCHUK: Yes, excuse me.

1 Q. Dr. Allin, were you involved in the  
2 preparation of the code for practice in riparian areas?

3 DR. ALLIN: A. I was involved to the  
4 extent that I reviewed a couple of drafts of it.

5 Q. Can you tell us who was the principal  
6 author?

7 A. John Carey.

8 Q. Now, I believe that when you talked  
9 about the effectiveness of the fisheries guidelines to  
10 protect fish you also indicated that the code for  
11 practice in riparian areas would be helpful as well; is  
12 that not correct?

13 A. That's correct.

14 Q. Is it your view then that there are  
15 improvements in practice in riparian areas that would  
16 be desirable? In other words, that there are now some  
17 practices in riparian areas that should be improved?

18 A. Well, my understanding is that  
19 occasionally in localized situations some practices are  
20 employed from time to time that are not the best, and I  
21 would like to see those -- the occurrence of that sort  
22 of thing reduced, and I look to the use of good  
23 practice, as described in the Code of Practice, to do  
24 that.

25 Q. And if I understand your evidence

1       correctly, I believe that you indicated it can be  
2       helpful with regard to erosion, sedimentation and  
3       organic debris?

4                   A. Yes, that's right. Those are  
5       basically the effects that the Code would influence.

6                   Q. And those are effects I take it that,  
7       in your view, do occur at this time; that is, negative  
8       impacts from timber harvest of erosion, sedimentation  
9       and the deposit of organic debris?

10                  A. Yes, I would say that those effects  
11       occur occasionally.

12                  Q. What is your source -- or the source  
13       for your conclusion that they occur occasionally?

14                  A. From my discussions with a number of  
15       field staff, from my own observations, and trips that I  
16       have taken to observe timber operations occurring near  
17       water.

18                  Q. Okay. Mr. Oldford, I believe Mr.  
19       Freidin asked you if the application of the Code of  
20       Practice in riparian areas was mandatory and I am not  
21       clear of your response to that.

22                   And more broadly, I am not clear how  
23       mandatory this Code is. Could you tell us that,  
24       please?

25                  MR. OLDFORD: A. It will be necessary to

1 follow and observe the Code of Practice in riparian  
2 areas.

3 Q. Does it have the same status as the  
4 fish and tourism guidelines - and I am not sure about  
5 the status of the moose guidelines at this point - but  
6 does it have the same status as the fish guidelines,  
7 for example?

8 A. I would say it doesn't have the same  
9 status, it's not a provincial guideline, but it's a  
10 Code of Practice designed to heighten the awareness of  
11 operating in these areas and improve practice in an  
12 overall way.

13 Q. And wouldn't it be helpful to give it  
14 the status of a provincial guideline in order to ensure  
15 its application?

16 A. I believe we will be able to ensure  
17 its application working directly with the industry.  
18 And the Code of Practice was brought in to improve our  
19 overall performance, not because the problems were so  
20 significant out there now that it was needed.

21 THE CHAIRMAN: What is the downside of  
22 making it mandatory on the same basis as a guideline?

23 MR. OLDFORD: I think, Mr. Chairman, with  
24 the Code of Practice it's going to be necessary to have  
25 flexibility in the field.



1 THE CHAIRMAN: Is not that built in to  
2 the Code of Practice itself though?

3 MR. OLDFORD: Yes, there is flexibility  
4 built in.

5 THE CHAIRMAN: So what is the objection  
6 to trying to elevate its status to be mandatory across  
7 the province with the built in flexibility?

8 MR. OLDFORD: Spoken of in those terms,  
9 probably not a great problem.

10 MRS. KOVEN: Mr. Oldford, were there any  
11 ramifications from the uneven application of the moose  
12 guidelines that caused this to become a less rigid Code  
13 of Practice rather than a provincial guideline?

14 MR. OLDFORD: Not that I am aware of, but  
15 Dr. Euler could speak to that better than I could.

16 DR. EULER: To the best of my knowledge,  
17 there were none.

18 MS. SWENARCHUK: Q. How exactly is the  
19 Ministry proposing to ensure the application of its  
20 Code, Mr. Oldford?

21 MR. OLDFORD: A. We recognized right  
22 from the beginning that to ensure that this Code is  
23 followed, the Ministry will need the cooperation of all  
24 field people, field people within the Ministry and  
25 within the industry and we intend to get that.

1                   There is a commitment that that be given  
2                   and we are going to have education, training package  
3                   and that's how we are going to achieve that.

4                   Q.   Is it going to be referenced in the  
5                   timber management plans?

6                   A.   I don't believe so. I believe that  
7                   the intent of the Code is to raise our awareness so  
8                   that we do things right everywhere we possibly can do  
9                   them properly.

10                  Q.   So it's a question then of education  
11                  rather than enforcement; is that it?

12                  A.   Yes.

13                  Q.   Do you anticipate that -- for  
14                  example, yesterday the Board saw a chart that was  
15                  prepared in response to one of our interrogatories with  
16                  regard to wildlife - various questions - but one of the  
17                  questions asked for which an answer is provided is the  
18                  number of post-cut inspections conducted in these  
19                  various districts relating to wildlife.

20                  Should we expect that there will be  
21                  inspections carried out by Ministry persons of practice  
22                  in riparian areas once this Code is in effect to ensure  
23                  that it has been complied with?

24                  A.   Yes.

25                  Q.   This will then become part of the -

1 to use the term loosely - enforcement process of the  
2 Ministry?

3 A. Yes, it's part of the enforcement  
4 process right now. Like in that even when I was a unit  
5 forester, and that's some years ago, I checked the  
6 reserves to see that things were carried out properly.

7 Q. And when we had Mr. Ward on the stand  
8 who talked about the enforcement of fisheries  
9 protection, we discussed the Federal Fisheries Act and  
10 it's Section 33:

11 "Protection against the deposition of  
12 deleterious materials into waterbodies."

13 Would this be what you would be relying  
14 on for enforcement, using the word loosely again, of  
15 the Code provisions as well?

16 A. I am not really familiar with the  
17 enforcement of the Fisheries Act. I would like to have  
18 that question referred to Dr. Allin.

19 Q. Mr. Greenwood seems to be eagerly  
20 reaching for the microphone.

21 MR. GREENWOOD: A. I was just going to  
22 add that I wasn't involved with the development of the  
23 Code, but I did hear some discussion about it Ms.  
24 Swenarchuk, and in terms of some of the questions, the  
25 enforcement was the one that I was particularly

1 thinking of.

2 It is my understanding that the practices  
3 within the Code will be monitored as part of the area  
4 inspections which are described in Panel 16 and,  
5 therefore, it is enforced in that way.

6 In terms of mandatory, it was also my  
7 understanding that the consideration of those factors  
8 which are included in the Code would be mandatory.  
9 And also in terms of how this would be implemented, it  
10 was my understanding that a policy would be written for  
11 the implementation of the Code.

12 Q. Can you tell us who else was involved  
13 in the drafting of it besides Mr. Cary and yourself,  
14 Dr. Allin?

15 DR. ALLIN: A. I don't know who else in  
16 the Ministry was involved in drafting it. I believe  
17 that a number of people reviewed drafts. The drafts  
18 were also reviewed by Ministry of the Environment and  
19 OFIA.

20 Q. Any other outside groups?

21 A. Not to my knowledge.

22 Q. Thank you. Now, am I correct, Dr.  
23 Allin, in believing that the fisheries guidelines  
24 provide that there will be no landings in areas of  
25 concern near lakes or streams?



1                   A. They indicate that generally  
2 speaking, yes, landings should not be located within  
3 areas of concern.

4                   Q. But not all lakes and streams are  
5 protected by areas of concern; is that correct?

6                   A. Not all lakes and streams, that's  
7 right. There is a definition within the fisheries  
8 policy that covers the use of the guidelines as to what  
9 waters the guidelines will be applied to.

10                  Q. And I take it there is no limitation  
11 on landings near lakes or streams when those  
12 waterbodies are not in areas of concern?

13                  A. That's correct, in the sense that the  
14 guidelines would not cover that situation.

15                  Q. And would you agree that proximity of  
16 landings could be damaging to the waterbody?

17                  A. Yes, that -- there is the potential  
18 for that to occur.

19                  Q. Now, I believe that you have agreed  
20 with the position expressed here by Mr. Armson that -  
21 and feel free to qualify this to make it totally  
22 accurate - but in general, that erosion is not a  
23 serious problem in Ontario; is that correct?

24                         That in the general context of the  
25 undertaking it may occur in some local areas, but it is

1 not a serious problem and revegetation will limit the  
2 problems that it creates?

3 A. I would agree that that is generally  
4 true. As I indicated earlier, I believe there are  
5 isolated cases where mineral soil is exposed, soil is  
6 compacted. If that happens near water, then that can  
7 lead to a potential adverse effect.

8 But, generally speaking, in terms of  
9 timber harvest, there is relatively little mineral soil  
10 exposure which, therefore, has a potential to lead to  
11 erosion and sedimentation.

12 Q. Now, I understand there are no  
13 studies of this subject in Ontario; is that correct?

14 A. Are you referring specifically to  
15 the...

16 Q. Let me put the question another way.  
17 What is the basis of your conclusion that this problem  
18 is very localized and not of significance within the  
19 area of the undertaking?

20 A. My knowledge of the situation comes  
21 from certainly studies elsewhere of the amount of  
22 mineral soil exposure following various types of  
23 harvest operations.

24 Q. Mm-hmm.

25 A. Which would indicate that the

1 occurrence of mineral soil exposure is quite localized  
2 and also, simply from my own observations in the field,  
3 and the fact that I have not seen extensive areas of  
4 mineral soil exposure following harvest.

5 Q. Well, just following that up to some  
6 extent, is it not true - I will ask this to Mr.  
7 Greenwood - that in fact the amount of disturbance in  
8 the forest floor varies considerably after harvest  
9 depending on the machines used and the site?

10 MR. GREENWOOD: A. It would vary. I  
11 don't know if I would choose the word considerably, but  
12 it would definitely vary depending on the equipment  
13 used and something like season of operation as well.

14 Q. And, for example, one would expect to  
15 find less disturbance of sandy flats than of a swampy  
16 site harvested in the summer with large machinery? So  
17 there is a variation.

18 A. That would very much, in your  
19 example, depend on whether that machinery had been  
20 modified or not. Given the same piece of machinery and  
21 that that machinery -- well, I am sorry, I would have  
22 to know the site that you are describing before I could  
23 really say that. If you are describing a lowland wet  
24 site--

25 Q. I am.

1                   A. --then those sites normally aren't  
2                   subject to erosion anyways.

3                   Q. I asked about soil disturbance.

4                   A. Soil disturbance. If the moisture --  
5                   if it was one of those sites where the moisture was  
6                   near to the surface and you were talking about the same  
7                   piece of equipment, then I would agree, yes.

8                   Q. And when you talk about equipment  
9                   modifications, I assume you are referring to high  
10                  flotation tires?

11                  A. That's correct.

12                  Q. And isn't it true that even with high  
13                  flotation tires, there are occasions when harvest can  
14                  result in rutting and ponding?

15                  A. There are occasions, yes.

16                  Q. Okay. Now, you also, Dr. Allin,  
17                  discussed the question of phosphorus leaching into a  
18                  lake due to a timber harvest, and I understand that it  
19                  was your assessment that there would be some question  
20                  of how effective the guidelines would be in protection  
21                  of waterbodies.

22                  From that question, if we presumed an  
23                  extensive clearcut even with a lakeshore reserve, that  
24                  the reserve would not necessarily prevent the leaching  
25                  of phosphorus into the lake because it would be small



1 in relation to the size of the clearcut and not hav e  
2 much effect on the ground waterflow?

3 DR. ALLIN: A. I believe I said that I  
4 would not expect that the maintenance of a shoreline  
5 reserve would prevent the movement of phosphorus into a  
6 lake in groundwater, but it may have some effect on  
7 reducing the amount that comes in.

8 I know of at least one study which  
9 concluded that the use of a reserve was in part  
10 effective in reducing the amount of nutrients leaching  
11 into water.

12 THE CHAIRMAN: Is that because they are  
13 taken up by the vegetation?

14 DR. ALLIN: Yes, that is the presumption.

15 MS. SWENARCHUK: Q. Now, would it be  
16 true that you would expect less leaching as a result of  
17 a small area clearcut than of a large area clearcut,  
18 simply because the effect on the ground waterflow would  
19 be less?

20 DR. ALLIN: A. Yes, I would expect that,  
21 given a specific watershed. I think what is important  
22 really is the size of the clearcut in relation to the  
23 area of the watershed.

24 Q. Now, when you were discussing the  
25 question of phosphorus entering into the water systems,

1 the Chairman asked if other guidelines would be of  
2 assistance here, for example, would the Tourism  
3 Guidelines prevent phosphorus from getting into the  
4 water.

5 And I would simply like you to consider  
6 this question, Mr. Clark: Isn't it correct that the  
7 Tourism Guidelines in fact don't address themselves to  
8 this kind of question, they aren't designed for water  
9 quality protection?

10 MR. CLARK: A. That's correct.

11 Q. Now, Dr. Allin again, you discussed  
12 with Mr. Freidin the issue of whether tradeoffs could  
13 be made in favour of values other than fisheries with  
14 consideration of the fisheries guidelines.

15 And I take it your position is that  
16 tradeoffs for other values would be possible only if  
17 there was a very strong rationale?

18 DR. ALLIN: A. Yes.

19 Q. Do you agree with that?

20 A. Yes, I would.

21 Q. And I think the example that you  
22 discussed then with Mr. Freidin was trading off fish  
23 habitat versus an endangered species of wildlife.

24 What about tradeoffs between fisheries  
25 protection and cheaper road construction? How do the

1 guidelines assure that that kind of tradeoff won't take  
2 place resulting in not fisheries habitat protection,  
3 but an advantage to the extract or through cheaper road  
4 construction?

5 I guess I am talking here about a road  
6 that is built close enough to a waterbody to cause  
7 damage to the fishery and that economic value clearly  
8 is also a value that could enter into the tradeoff, so  
9 how do the guidelines prevent that?

10 A. The Fish Habitat Guidelines would  
11 restrict the location of roads. Basically they direct  
12 that roads not be located within areas of concern,  
13 except where a stream crossing is needed. That is  
14 really the only exception that the guidelines would  
15 provide for, on a routine basis.

16 So that as long as the road is located  
17 outside the area of concern, then really, except for  
18 the stream crossing itself, the quality of the road  
19 construction itself is not a particularly important  
20 factor.

21 Q. Isn't it correct, didn't you testify  
22 that even with a lake trout lake, in exceptional  
23 circumstances there could be the odd case where a road  
24 would be constructed in an area of concern and that it  
25 should be built with particular care. But it is

1 possible; is it not?

2 A. Well, I was presuming that there was  
3 a sufficiently strong rationale in terms of other  
4 values that we would seriously consider having to  
5 locate a road within an area of concern on a lake trout  
6 lake, and I think what I was trying to say was that  
7 where that occurred, I would expect a very high  
8 standard of construction.

9 And the road guidelines that you are  
10 going to hear about in Panel 14 provide a good deal of  
11 information on how to build roads to a very high  
12 standard.

13 Q. So the door is open again. How do we  
14 assure that only the strongest rationale is going to  
15 result in this occurring and who is going to determine  
16 how strong the rationale has to be?

17 A. Well, I can only speak from the  
18 position as a biologist who might be approached with a  
19 proposal of that sort and I would have to make my  
20 judgment on the basis of what I knew about that  
21 particular situation, what was proposed in terms of the  
22 kind of road, the construction practices that were  
23 proposed, the values that I as a biologist was  
24 particularly concerned with, and perhaps other  
25 alternatives that might be available.



1                   I would like to -- I would want to see  
2           what alternatives there were to, first of all, locating  
3           the road in the area of concern and then, if the road  
4           were located in the area of concern, the various ways  
5           that could be used to in fact protect the value I was  
6           concerned about.

7                   Q.   You wouldn't have the last word as  
8           the biologist; would you?

9                   A.   No, ultimately not, that would be the  
10          district manager and the regional director involved.

11                  Q.   The same question occurs when we look  
12          at page 866 of Volume II, an example you discuss  
13          regarding the cold water lake.

14                  And I believe that in the scenario that  
15          you outline, you concluded that there could be, and you  
16          indicated on the diagram, that there could be modified  
17          operations in the vicinity of the lake.

18                  A.   Yes.

19                  Q.   So both with regard to the roads --  
20          the road question and this one, I guess my question is:  
21          Do the guidelines provide the biologist with any backup  
22          as regards the final decision-maker deciding whether  
23          the resource value is going to be fully protected in  
24          accordance with the guidelines here or not?

25                  I have no doubt that biologists will be

1 inclined to maximize the protection of the fisheries  
2 resource, however within these scenarios when we are  
3 dealing with tradeoffs, as I say, what kind of backup  
4 do you have in the guidelines?

5 You make the rationale and then it is  
6 simply up to some other decision-maker to decide  
7 whether or not to accept it. Isn't that the way it  
8 works?

9 A. Yes, although I would point out that  
10 in this particular example the guidelines restrict the  
11 kind of operations that would -- that could take place  
12 in this particular scenario.

13 In other words, the guidelines do not  
14 provide for activities which would or could potentially  
15 cause a major disturbance on the shoreline. They do  
16 not, for example, permit clearcutting on the shoreline.

17 So that area that is indicated for  
18 modified operations, the only option there is limited  
19 selection cutting. We are not talking about a clearcut  
20 situation in this example.

21 Q. So it gives that much backup, there  
22 couldn't be clearcutting?

23 A. Yes.

24 Q. Now, I believe you discussed with Mr.  
25 Freidin too the question of imposing -- or the imposing

1 of further terms and conditions for protection of the  
2 fisheries, and I believe that your position was that if  
3 the Fish Habitat Guidelines and the Code of Practice in  
4 riparian areas are followed, that no further terms and  
5 conditions on practice in this area should be imposed.  
6 Is that correct?

7 A. I believe I said that I didn't feel  
8 any additional ones needed to be imposed.

9 Q. So you are confident then that this  
10 will be comprehensive and sufficient protection for the  
11 fisheries resource?

12 A. Yes, I do, bearing in mind we are  
13 going to be scientifically testing the effectiveness of  
14 these guidelines through the effects monitoring  
15 program, but I believe in the interim this provides a  
16 conservative level of protection for fish habitat, yes.

17 Q. And there are no further conditions  
18 that you think would be helpful to have imposed?

19 A. I can't think of any.

20 Q. Mr. Greenwood, I would like to turn  
21 now to questions of compaction and rutting, and I  
22 believe you indicated in your testimony that current  
23 actions to prevent or minimize compaction and rutting  
24 include modifying equipment, the time of operation,  
25 skid trails and the training of operators.

1 Is that correct?

2 MR. GREENWOOD: A. Those are three of  
3 them. I don't -- I don't just remember if that was all  
4 of them, correct.

5 Q. Four of them actually, modifying  
6 equipment and the type of operation, skid trails and  
7 training of operators.

8 A. And skill training, yes.

9 Q. Now, can you give us some sense of  
10 the prevalence of each of these within the area of the  
11 undertaking, where is it being done and by whom, and  
12 how much, and the source of your information for that?

13 A. I think I led in evidence that the  
14 major concern for compaction and rutting, more  
15 particularly rutting, due to the prevalence of  
16 susceptible sites is within the Clay Belt area of  
17 Ontario, the Great Clay Belt in the Hudson's Bay  
18 lowland.

19 In answer to your first question, the  
20 majority of those four, with the exception of altering  
21 season of operation, would take place within that area.  
22 Outside of that area where susceptible sites are more  
23 dispersed and make up a much smaller part of the  
24 landscape, it is my experience that the normal practice  
25 is to leave those areas for winter operations. Now,



1       probably the primary reason is due to lack of  
2       traffability in those areas.

3               I also said in my evidence-in-chief that  
4       these two work hand-in-hand to limit effects on the  
5       sites. It is very difficult to work equipment in these  
6       sites and, therefore, operators prefer to harvest them  
7       in winter time.

8               Within the Clay Belt area that isn't  
9       always possible due to the prevalence of those sites  
10      and, therefore, that is where you would find  
11      modification of equipment, alteration of skid trail  
12      patterns, and that type of modification.

13              Q. Now, who decides in what season a  
14      site is going to be harvested? Does the unit forester  
15      have anything to do with that, or is that a decision  
16      that is strictly made by the company?

17              A. The decision would originate with the  
18      forester responsible for those harvest operations.  
19      However, on sites that are sensitive and known to be  
20      sensitive, quite often you would see that reflected in  
21      the silvicultural groundrules.

22              Within the Clay Belt area that is common  
23      and, in that sense, the unit forester or the forester  
24      working for Ministry of Natural Resources could monitor  
25      that type of operation and that type of prescription.

1                   Q. Now, would it be the practice of the  
2           Ministry forester to go out and look at the sites and  
3           then discuss -- or discuss with the company what the  
4           harvest method should be and when it should be done, or  
5           is it a matter of monitoring after the fact.

6                   A. Well, the type of discussion that you  
7           described would take place, but more common would be  
8           the forester examining those silvicultural groundrules  
9           where sites were described that might be susceptible  
10          and then determining that the appropriate prescription  
11          was applied through those groundrules.

12                   The concern for most of the rutting, for  
13          instance, in the Clay Belt was primarily -- well, the  
14          original concern -- the focus of that concern was with  
15          renewal operations which followed, and that is why we  
16          are seeing them in the silvicultural groundrules which  
17          speak more to renewal operations.

18                   Q. All right. Now, what is the source  
19          of your conclusion that rutting and compaction happen  
20          to a limited extent across the area of the undertaking?

21                   A. At the current time, that comes from  
22          personal observation, having worked in the northern  
23          region where the susceptible sites were, having been  
24          aware, again from personal experience, of the change  
25          that has taken place and since -- within the 1980s,

1 with the advent of the forest eco-system  
2 classification, with the advent of high flotation  
3 tires, and also being aware of the type of information  
4 which is now contained in silvicultural groundrules  
5 which wasn't there even five years ago.

6 Q. And what kind of information is that?

7 A. The information? Season of harvest,  
8 even summers detailed as to the ground pressure that  
9 should be applied on the ground.

10 Q. And is that now a practice in all of  
11 the plans being developed, or some of the plans, or a  
12 few of the plans? Again, how prevalent is it?

13 A. Again, within the area where these  
14 sites are most susceptible, or where they are most  
15 prevalent, the Clay Belt area, that is very common, in  
16 fact -- well, I would think most of those areas and  
17 that those plans would contain that type of  
18 prescription in their groundrules.

19 Outside of that area, you probably  
20 wouldn't see that prescription.

21 Q. All right.

22 MS. SWENARCHUK: Come back to the  
23 interrogatory from before, Mr. Chairman.

24 THE CHAIRMAN: We are up to Exhibit 494.

25 ---EXHIBIT NO. 494: MOE Interrogatory No. 7 posed to

1 Panel 10.

2 MS. SWENARCHUK: Q. I take it from --  
3 has Mr. Oldford had a chance to see it?

4 MR. OLDFORD: A. Yes. I believe it is  
5 Question 7 that you are referring to?

6 Q. Of the Ministry of the Environment,  
7 yes.

8 A. Yes.

9 Q. So I take it from looking at this  
10 response that there is a limitation to the type of  
11 equipment which can be equipped with high flotation  
12 tires?

13 A. There is as far as tires go, yes.

14 Q. Right. Now, are these types of  
15 equipment also used in the Clay Belt area?

16 A. Yes.

17 Q. So is it possible and does it occur  
18 that these kinds of skidders are used on sensitive  
19 sites without high flotation tires and, presumably  
20 given their weight, contribute to rutting or  
21 compaction?

22 A. Very seldom. Probably I should  
23 explain the reply to that interrogatory.

24 The interrogatory asked if the Koehring  
25 Shortwood Harvester, which is a very heavy piece of



1 equipment, could be equipped with high flotation tires.  
2 It also asked if feller-bunchers could be equipped and  
3 feller-forwarders.

4 Now, the Koehring Shortwood Harvester is  
5 extremely heavy and it can not be equipped with those  
6 tires, but it is not used in those sites.

7 Feller-forwarders, like the large  
8 Koehring feller-forwarder that we saw when my evidence  
9 was presented, is also not equipped with those tires  
10 but is not used on those sites..

11 The feller-buncher that I have referred  
12 to can be equipped with tires but not with tires that I  
13 would call high flotation fires. The feller-buncher is  
14 the one piece of equipment that is used on those sites  
15 during the frost-free period, but that piece of  
16 equipment is normally on a track carriage, a wide track  
17 carriage which provides the same flotation.

18 So it can be equipped with high flotation  
19 gear, but not so much tires, rather tracks and tracks  
20 is the predominant feature of these machines used in  
21 this area.

22 Q. And that offers the same level of  
23 protection, you are saying, as the tires?

24 A. Yes, and I think that was  
25 demonstrated in the slides.

1 MS. SWENARCHUK: What is this next  
2 number, Mr. Chairman?

3 THE CHAIRMAN: 494.

4 MS. SWENARCHUK: This would be a  
5 convenient place to stop for me.

6 THE CHAIRMAN: Okay. I think it has been  
7 a reasonably long day.

8 Ladies and gentlemen, we will adjourn  
9 today until 8:30 tomorrow morning, tomorrow being  
10 Thursday, will be the departure at roughly the same  
11 time and we will be adjourning tomorrow some time prior  
12 to two o'clock.

13 Thank you.

14 MS. SWENARCHUK: Could it possibly be  
15 nine o'clock tomorrow.

16 THE CHAIRMAN: Can it be nine o'clock  
17 tomorrow? Do you need the extra time?

18 MS. SWENARCHUK: Yes.

19 THE CHAIRMAN: Very well, nine o'clock.

20 MS. SWENARCHUK: Thank you.

21 ---Whereupon the hearing adjourned at 4:45 p.m., to be  
22 reconvened on Thursday, April 6th, 1989, commencing  
at 9:00 a.m.

23

24

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